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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IRON WORKERS LOCAL UNION NO. 17)
INSURANCE FUND and its Trustees,) Civil
et al.,) Action No.
) 1: 97CV 1422
) VOLUME I
vs.)
PHILIP MORRIS, INC., et al.,)
) Defendants.)

Deposition of JAMES J. MORGAN, at
200 Park Avenue, 42nd Floor, New York,
New York, commencing at 10:02 A.M.,
Wednesday, November 25, 1998, before
Elizabeth Davila.

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APPEARANCES OF COUNSEL:

FOR IRON WORKERS LOCAL UNION NO. 17 INSURANCE
FUND and its Trustees, et al.:

MILBERG WEISS BERSHAD HYNES & LERACH
(Not Present At Deposition)
600 West Broadway, Suite 1800
San Diego, California 92101

-AND-

ROGER M. ADELMAN, ESQ.
Suite 730
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Washington, DC 20036

FOR PHILIP MORRIS, INC., et al.:

WINSTON & STRAWN
BY: ALAN B. HOWARD, ESQ.
ADAM J. SCHLATNER, ESQ.
200 Park Avenue, Suite 730
New York, New York 10166-4193

ALSO PRESENT:

BART TARULLI, VIDEOGRAPHER

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THE VIDEOGRAPHER: Good morning.
My name is Bart Tarulli of Video
Documentaries, 421-13 Route 59, Monsey, New York.
Today's videotape deposition is
being taken of James J. Morgan in the matter of
Iron Workers Local Union No. 17 Insurance Fund
and its Trustees, et al. versus Philip Morris,
Inc., et al.
Attorney for the plaintiff is Roger
M. Adelman. Attorneys for the defendant and

11 witness are Alan B. Howard and Adam J.
12 Schlatter. Our court reporter is Elizabeth
13 Davila.

14 Today is Wednesday, November 25th,
15 1998; the time is now 10:02 a.m.

16 Miss Court Reporter, please swear in
17 the witness.

18 (Continued on next page.)
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1 JAMES J. MORGAN,
2 having been first duly sworn, testified as
3 follows:
4

5 MR. HOWARD: Before we begin I
6 just want to make a statement for the record
7 based on discussion with counsel before the start
8 of the deposition. In the event that any
9 documents are intended to be introduced for this
10 deposition by plaintiffs' counsel that are --
11 remain on the list of documents as to which
12 Philip Morris maintains a privilege and is
13 continuing to assert a privilege -- and I'm
14 thinking in particular about documents that were
15 released over objection in the Minnesota case,
16 and as I understand it now, there has been no
17 determination in this action as to whether that
18 privilege will be upheld or not.

19 Counsel have agreed that if any such
20 document is introduced we will withhold
21 questioning on that document until the conclusion
22 of the deposition and then ask questions about
23 the document in a sealed portion, separate
24 portion of the transcript, which will remain
25 sealed until such time as there is a

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1 determination that a particular document is not
2 privileged, that a privilege is withdrawn or
3 overruled by this court and at that time only
4 will that portion of the deposition be usable.

5 I also want to add that I believe
6 that we have the most up-to-date list of
7 documents. It is certainly not my intend to
8 waive any asserted privilege as to any document.
9 And if we overlook one that is introduced we are
10 maintaining a privilege that it is not intended
11 to be a waiver.

12 THE VIDEOGRAPHER: Gentlemen,
13 before we begin I have to go off the record for a
14 second, I have a little problem here.

15 Going off the record, it's 10:04
16 a.m.

17 (Discussion off the record.)

18 THE VIDEOGRAPHER: Back on the
19 record, 10:07 a.m.

20 MR. ADELMAN: Continuing on the
21 record, counsel has accurately stated our

22 agreement.
23 MR. HOWARD: He's just checking
24 the view.
25 THE VIDEOGRAPHER: Go ahead.
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1 EXAMINATION
2 BY MR. ADELMAN:
3 Q. Mr. Morgan, I wonder if you can tell
4 us what your current operation or endeavor is at
5 this point.
6 A. I am currently retired from my
7 position at Philip Morris. I --
8 Q. When did you retire?
9 A. November 1st, 1977.
10 Q. 1977?
11 A. 1997, seems like a long time ago.
12 And I am currently doing a variety of things,
13 none of which are regular employment.
14 Q. Well, are you doing any consulting?
15 A. Yes, I am doing consulting.
16 Q. Are you consulting in any way for
17 Philip Morris?
18 A. No, I do not.
19 Q. Are you consulting in any way for
20 the tobacco industry?
21 A. I do not consult in any way for the
22 cigarette industry.
23 Q. What is the nature of the consulting
24 business?
25 A. That is -- I've signed
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1 confidentiality agreements with my clients, but I
2 can assure you that my consulting has nothing to
3 do with any company involved in this case or in
4 the cigarette industry.
5 Q. Well, let me approach it this way:
6 What type of consulting do you do without
7 disclosing the client?
8 A. General marketing consulting.
9 Q. What else do you do for a living
10 besides the consulting?
11 A. For a living; that's all I do for a
12 living.
13 Q. Do you have any connection with
14 Philip Morris by virtue of being a member of the
15 board?
16 A. No, I do not.
17 Q. Have you since you retired on the
18 1st of November 1997 receive any payment,
19 remuneration or anything of value from Philip
20 Morris?
21 A. My retirement, yes.
22 Q. All right. Aside from that?
23 A. No.
24 Q. Have you --
25 A. Throughout -- I'm sorry. Let me
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1 back up.
2 As part of my retirement agreement I
3 have received a couple of things that were
4 continuations of benefits that I got while I was
5 employed by Philip Morris. For example, I have
6 been able to keep my company car for a two-year

7 period, which I then have to buy from the
8 company.
9 As an executive I had a security
10 system in my house, which the company is
11 maintaining for another two years, so things like
12 that.
13 Q. Let's find out what they are.
14 Company car, the security system;
15 what else are you receiving?
16 A. I believe that's it. I am not --
17 Q. Do you attend any meetings at Philip
18 Morris?
19 A. No. I have not been at a meeting
20 since the day I retired.
21 Q. Are you a consultant, using the word
22 broadly, in any way about business matters at
23 Philip Morris, specifically if things come up
24 that were in your existence during your tenure;
25 people call you up asking you: What about this,
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1 what about that?
2 A. No.
3 Q. Now, let me understand a couple of
4 things here. How many times have you been
5 deposed to your recollection in this case?
6 A. In this case?
7 Q. Yes.
8 A. None.
9 Q. How many times have you been deposed
10 in connection with litigation involving tobacco
11 companies, including Philip Morris?
12 A. I believe I've been deposed four or
13 five times, and I've appeared at trial once.
14 Q. Where was the trial?
15 A. Minnesota.
16 Q. You testified on the witness stand?
17 A. Yes, I did.
18 Q. Now, do you recall, beginning with
19 the first one, when those depositions took place?
20 A. Those depositions would have taken
21 place I believe in 1996 and 1997.
22 Q. Do you know in which cases you were
23 deposed?
24 A. Yes, I do. And I may be forgetting
25 one, but I was deposed in the flight attendant's
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1 case.
2 Q. Case in Florida?
3 A. Case in Florida; I believe it was
4 called Brawn.
5 I was deposed in the State of
6 Florida case. I was deposed in the state of
7 Texas case; two separate depositions in that, or
8 at least by two different counsel.
9 I was deposed in the State of
10 Minnesota case; and I testified at trial in the
11 State of Minnesota case I believe. I think
12 that's everything.
13 Q. Besides giving depositions in these
14 various proceedings, did you ever submit
15 affidavits --
16 A. I don't --
17 Q. -- excuse me, in any of those

18 proceedings?
19 A. I don't recall.
20 Q. Well, does that mean that you could
21 have or that you simply don't recall doing it?
22 A. I do not recall. I remember
23 submitting affidavits several times but I don't
24 know whether they related to those specific
25 cases.

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1 Q. Why don't we approach it this way:
2 To what do those affidavits relate?
3 A. I'm sorry, I really -- I do not
4 remember. In my position I submitted lots of
5 affidavits on trademark cases and things like
6 that. I just really do not recall whether or not
7 I submitted affidavits related to these cases.
8 Q. Do you recall whether you submitted
9 an affidavit in connection with what we could
10 call the Waxman hearings that were held before
11 the congress in 1994?
12 A. I do not recall that. I was not the
13 president of the company at that time. I was the
14 head of marketing, and I do not recall submitting
15 an affidavit.

16 I may have, but I do not recall.

17 Q. And again, with respect to the
18 litigation involving any and all of the tobacco
19 companies, including Philip Morris, do you have
20 any recollection of submitting an affidavit?
21 A. No, I do not have a recollection of
22 submitting an affidavit that relates to those
23 litigations.
24 Q. All right. In connection with those
25 litigations did you submit any writing, a letter,

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1 a memo or anything of that sort?
2 A. No.
3 Q. -- excuse me, let me finish my
4 question -- either in court or opposing counsel?
5 A. Not that I recall.
6 Q. Now, in connection with this
7 deposition have you had occasion to read anything
8 before you came here to be deposed today?
9 MR. HOWARD: I would advise to
10 exclude from that answer anything that was shown
11 to you by counsel.
12 You can answer yes or no, but
13 exclude any details about anything shown to you
14 by counsel.
15 MR. ADELMAN: Just so we're clear,
16 I don't want to inquire as to what your counsel
17 communicated to you.
18 All I want to know is the fact of
19 what you read, if that's what you're saying,
20 we're in agreement here.
21 Q. I just want to know what you read.
22 A. I reviewed the transcript of the
23 Minnesota trial appearance and I looked at a
24 number of documents that I had previously been
25 exposed to in other depositions.

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1 Q. Did you review any other deposition
2 transcripts?

3 A. No, I did not.
4 Q. What were the documents reviewed, if
5 you recall?
6 MR. HOWARD: Here I have to object
7 because to the extent they were shown to you by
8 counsel that reflects an attorney work product.
9 MR. ADELMAN: I don't think work
10 product applies here where you've shown him
11 certain documents.
12 I just want to know generically.
13 I'm not trying to -- I have a bunch to show him
14 here.
15 MR. HOWARD: That's fine. I just
16 don't -- I believe there is a work product that
17 applies, unless I showed him something that
18 refreshed his recollection.
19 If you want a generic description of
20 the documents, that's fine. I'll just ask him
21 not to identify specific documents that he was
22 shown.
23 MR. ADELMAN: That's fine.
24 BY MR. ADELMAN:
25 Q. Can you generally tell us what those
0014 documents are?
1 A. The documents --
2 (Telephone interruption.)
3 MR. ADELMAN: Go off the record
4 for a second.
5 THE VIDEOGRAPHER: Going off the
6 record, it's 10:16 a.m.
7 (Discussion off the record.)
8 THE VIDEOGRAPHER: Back on the
9 record, it's 10:17 a.m.
10 BY MR. ADELMAN:
11 Q. Mr. Morgan, before we continue, I
12 think you want to amend an answer you gave a
13 moment ago regarding the number of depositions
14 that you've given in connection with tobacco
15 litigation.
16 A. That is correct.
17 I gave you a chronological list, and
18 forgot one which actually happened yesterday
19 which is -- I actually don't know the name of the
20 case, but it is the smoking and health case
21 that's taking place in Memphis, Tennessee; and I
22 gave that deposition yesterday in this office.
23 Q. Let me return to the issue we were
24 pursuing with this, the documents -- the type of
0015 documents you reviewed before you testified --
1 came to testify here; can you describe those,
2 please?
3 A. Yes. It was a series of documents,
4 again, which I had previously been deposed on or
5 testified under. And I would characterize them
6 as a series of documents that involved the market
7 research department at Philip Morris and/or the
8 research and development department in Richmond
9 that related to consumers.
10 Q. All right. Now, when did you start
11 with Philip Morris?
12 A. I started in June of 1963 right out

14 of college.
15 Q. Where did you go to college?
16 A. Princeton.
17 Q. Can you run through your progress
18 and positions in the company from '63 to '97?
19 A. Surely. Surely.
20 I started in 1963 as a trainee,
21 marketing trainee; and I held a variety of
22 positions in advertising, media advertising,
23 production.
24 I then went out in 1965 and I was a
25 retail salesman in Hoboken, Bayonne and Jersey
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1 City, New Jersey; I did that for about a year.
2 Q. Excuse me. Where were you located
3 when you were marketing trainee from '63 to '65?
4 A. At 100 Park Avenue at Philip Morris
5 headquarters. And other than that stint in the
6 sales force that answer would hold for every
7 other job with Philip Morris, being located at --
8 Q. How long were you doing sales?
9 A. About a year.
10 Q. So '65 to '66 you were engaged in
11 sales?
12 A. Yes.
13 Q. What did you do after that?
14 A. I came back into the home office and
15 I was the assistant brand manager on Parliament
16 and Philip Morris brand cigarettes, and then held
17 a series of brand management positions.
18 After that I became Parliament brand
19 manager and then Virginia Slims brand manager,
20 then Marlboro brand manager in 1969 or '70. Then
21 I became assistant director of brand management,
22 then director of brand management, and then
23 assistant director of marketing.
24 And then in 1978, I think it was, I
25 became the executive vice president of marketing
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1 and sales for Philip Morris Incorporated.
2 Q. Before we go on, let's plug in some
3 dates here.
4 When were you the brand manager for
5 Parliament?
6 A. '67. Slims would be '68, '69 sort
7 of. Marlboro would be '69, '70, '71, '72; about
8 three years on Marlboro.
9 Q. Then you became assistant director
10 of brand --
11 A. Brand management, and I'd say that's
12 about '72, then '73 or '74, then '75, '76. And
13 then I know '78 was EVP in marketing.
14 Q. Not to belabor it, but when did you
15 become the director of brand marketing?
16 A. Brand management.
17 Q. Brand management, excuse me.
18 A. I'm going to guess it would have
19 been about 1972 or '73.
20 Q. When did you become assistant?
21 A. '75 I'd say, '76.
22 Q. How long did you remain executive
23 vice president?
24 A. For five years until 1983, in June,

25 when I left Philip Morris.

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1 Q. You went to Atari?

2 A. I went to Atari to become chairman
3 of Atari.

4 Q. How long did you stay there?

5 A. I stayed there for a year until
6 Warner sold the company, Warner Communications
7 sold the company.

8 Q. When did you come back to Philip
9 Morris?

10 A. September of 1988.

11 Q. And what then, sir?

12 A. I came back as vice president of
13 marketing and planning, working for the
14 corporation, not for Philip Morris Incorporated,
15 which is the domestic cigarette business.

16 Q. What was your next position?

17 A. I held that position basically for
18 five years. And I worked on -- actually, I'm
19 sorry, I should be more specific than that.

20 I held that position for two years
21 in 1988 and into 1989, at which point I became
22 the executive -- or senior vice president of
23 marketing for Kraft General Foods, which was a
24 Philip Morris subsidiary.

25 Q. How long did you serve in that

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1 position?

2 A. About a year.

3 Q. That takes us to 1991, what did you
4 do?

5 A. Then I went back to corporate
6 planning, to the corporation; and I worked in
7 that capacity for two years primarily on the food
8 and beer businesses.

9 And then I rejoined Philip Morris
10 Incorporated as senior vice president of
11 marketing in the spring of 1993, early spring of
12 1993.

13 I served in that position until
14 November -- December of 1994 when I became
15 president and chief executive officer of Philip
16 Morris Incorporated.

17 Q. And you retired from that position
18 in --

19 A. November 1st of '97, so that's
20 roughly three years.

21 Q. During your course at Philip Morris,
22 which would be roughly 29 years as I calculate
23 it, did you ever have any position or any
24 connection in any way with the Tobacco Institute?

25 A. Yes, I did.

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1 Q. What was that, sir?

2 A. I believe there were two
3 connections.

4 Sometime in the late 1970s I was put
5 on the Tobacco Institute -- I think it was called
6 the Communications Committee. I don't remember
7 how long I served on it, but I attended meetings
8 of the Communications Committee.

9 Then in 1994, when I became

10 president, I became a board member of the Tobacco
11 Institute and served in that capacity until I
12 retired.

13 Q. Do you have any connection from the
14 time of your retirement until now with the
15 Tobacco Institute?

16 A. No, I do not.

17 Q. Do you attend meetings?

18 A. No, I do not.

19 Q. Contribute to papers?

20 A. No, I do not.

21 Q. The Communications Committee you
22 were on, is that a Communications Committee
23 within the TI, or is it within Philip Morris?

24 A. The Communications Committee I
25 referred to would be within the TI. It was -- as

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1 I recall, it was the marketing and public
2 relations people in the member companies on the
3 committee.

4 Q. Can you tell us how long you worked
5 associated with TI, if you will, from the late
6 '70s on?

7 A. Well, certainly -- certainly not
8 past 1983 when I left Philip Morris. And I do
9 not recall whether I actually was on that
10 Communications Committee from 1979, or whatever,
11 until '83, but -- I just don't recall. At the
12 most, it would have been those four, four years.

13 Q. Your second tenure was from '94
14 to '97?

15 A. Correct.

16 Q. Now, during your course at Philip
17 Morris did you become familiar with the, I guess
18 you call it, CTR?

19 A. Yes. Again, in November of 1994,
20 December of '94, when I became president of
21 Philip Morris Incorporated, I became a board
22 member of CTR.

23 Q. How long did you serve as a board
24 member?

25 A. Until my retirement last year.

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1 Q. Prior to November 1994 did you have
2 any connection or dealings with CTR?

3 A. No, I did not.

4 Q. You were aware of its functions,
5 weren't you?

6 A. I was aware of its existence.

7 Q. And you became aware of that during
8 the course of your duties at Philip Morris I take
9 it?

10 A. Yes.

11 Q. I've read your prior depositions,
12 and you were questioned for some time about your
13 smoking history, I have some questions about
14 that.

15 Do you smoke now?

16 A. Yes.

17 Q. How frequently?

18 A. I smoke ten to 12 cigarettes a day.

19 Q. Was there ever a time that you
20 smoked more?

21 A. Yes.
22 Q. When were you smoking more?
23 A. Oh, I don't know. I've smoked --
24 sometimes I've smoked a pack a day, off and on.
25 Q. Well, let me use it -- you've cut
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1 back?
2 A. I've cut back. I probably --
3 because I'm giving depositions this week I may
4 have smoked a pack a day this week; it goes up
5 and down.
6 Q. Well, when did you begin to cut
7 back, putting the deposition period aside?
8 A. Probably after I stopped working.
9 Q. You mean in '97?
10 A. Yes.
11 Q. Have you ever been advised by your
12 doctor to cease smoking?
13 A. I was advised -- I was advised once
14 by my doctor. It's a fairly funny story, but
15 it's not the purpose.
16 Q. No, it's not.
17 When did he advise you?
18 A. Mid 1980s.
19 Q. Did you follow his advice?
20 A. No, I did not.
21 Q. Did he advise you you should stop
22 smoking because of health reasons?
23 A. No.
24 Q. What was the reason he told you to
25 stop smoking?
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1 A. Just that I should stop smoking --
2 it wasn't --
3 Q. He didn't connect it with health?
4 A. Well, not my own personal health.
5 Q. You're the patient.
6 A. Well, this doctor happened to be
7 someone who bummed cigarettes from me, so it was
8 sort of a funny discussion.
9 He told me that he knew that I knew
10 that I shouldn't smoke. I said, well, that's my
11 decision and I'm aware of the issues around it.
12 And he said, well, it's my duty to tell you not
13 to smoke, and that was pretty much it. He's
14 personal friend also.
15 Q. He knew you worked for Philip
16 Morris?
17 A. He knew I worked for Philip Morris.
18 Q. When did you start smoking?
19 A. I started smoking, as I recall, when
20 I was 14 or 15 years old.
21 Q. How much or how frequently did you
22 smoke, starting from your first duty assignment
23 at Philip Morris in 1963?
24 A. I come out of college. I was, what
25 I would call, a regular smoker at that time.
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1 Q. What does that mean?
2 A. I'd smoke somewhere between a half a
3 pack and a pack day.
4 Q. Did you continue that pattern
5 throughout your 29 year tenure at Philip Morris?

6 A. I stopped. I stopped a couple of
7 times during that period. I think I stopped
8 three times as I remember.
9 Q. Why did you stop?
10 A. Well, one time I wanted to stop just
11 because I wanted to see what it was like to stop,
12 and there was all this talk about stopping
13 smoking and whether it was difficult or not
14 difficult and on an intellectual basis I
15 stopped.
16 Q. When was this that you stopped
17 first?
18 A. I think it was in the late '70s, I'm
19 not sure.
20 Q. How long did you stop smoking at
21 that time?
22 A. I believe it was like sort of an --
23 three months, three or four months ago.
24 Q. You went cold turkey?
25 A. Yes.
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1 Q. Did you use anything to help you
2 stop?
3 A. No. Actually I shouldn't say that,
4 I used a toothpick.
5 Q. Well, that's significant because it
6 substituted your oral gratification?
7 A. Right. I just chewed on the
8 toothpick every once in a while when I felt like
9 having a cigarette.
10 Q. When was the second time you
11 stopped?
12 A. The second time I stopped was when I
13 went to Atari in 1983. I moved to California and
14 I just decided I was going to stop smoking for a
15 while.
16 Q. How long did you stop?
17 A. I can't remember again. I would say
18 six to nine months.
19 Q. Did you use anything to help you
20 stop during that six month period?
21 A. No, I didn't.
22 Q. When was the third time you stopped?
23 A. The third time I stopped would have
24 been in 1987. I had had a spontaneous
25 pneumothorax, which is a collapsed lung, and I
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1 stopped smoking after that --
2 Q. Go ahead.
3 A. -- for about six, six to nine months
4 I believe.
5 Q. Were you treated by a doctor for
6 that collapsed lung?
7 A. Sure was.
8 Q. Were you operated on?
9 A. Yes, I was.
10 Q. Did the doctor, or anyone connected
11 with the medical treatment that you received,
12 tell you that smoking could have been connected
13 with that collapsed lung?
14 A. No; actually they told me it
15 wasn't.
16 Q. I see. But you nevertheless stopped

17 anyway?
18 A. I stopped.
19 Q. Was that to help your lung get
20 better?
21 A. It was because it just seemed like a
22 stupid thing to do after I had had lung surgery.
23 Q. Why?
24 A. Just to me it seemed like a stupid
25 thing to do.

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1 Q. In other words you might injure your
2 lung; you're healing -- withdrawn.
3 You might injure your healing lung
4 if your smoking started; is that a fair
5 statement?

6 MR. ADELMAN: Objection to form,
7 no foundation.

8 A. No. I just -- it just seemed to
9 me -- I don't know enough about medicine or the
10 lung to know whether I'd hurt a healing lung or
11 not.

12 It just empirically seemed a very
13 smart thing to do that while -- after you had had
14 lung surgery and you were recuperating to not
15 smoke. I don't know the science or medicine of
16 it, it just struck me as something that was
17 intelligent to do.

18 Q. I don't want the science or
19 medicine, sir.

20 Your point of view, you're saying,
21 are you not, that while your lung was healing you
22 decided you would limit the potential injury to
23 the lung and one of the things you did was not
24 smoke?

25 A. No. Actually I am not sure I

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1 even -- well, it depends what you mean by
2 "injury."

3 It just seemed empirically clear to
4 me that when you have a scar, when your lung
5 collapsed, when you're regaining your strength,
6 when you think about taking deep breaths and
7 everything else, it seemed to me that I just
8 wasn't going to smoke.

9 Q. Because it might hurt your lung?

10 A. I don't know if it would hurt my
11 lung. I didn't think about it.

12 I mean if you want me to concede the
13 word "hurt" as meaning that it wouldn't benefit
14 my lung or it might possibly impact my lung in
15 some way, yes, that's the thought process, but I
16 didn't literally think: Oh, my gosh if I start
17 smoking I'm going to hurt my lung; I didn't think
18 that way.

19 Q. You're telling us you intuitively
20 realized that?

21 A. Yes. That's -- thank you.

22 Q. They taught you that at Princeton?

23 A. They may have taught it if I had
24 learned it.

25 Q. All right. When you resumed smoking

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1 in 1987 had your lung healed?

2 A. I have no idea.
3 Q. Have you had any further problem
4 with your lung?
5 A. No.
6 Spontaneous pneumothorax is just
7 something that happens. It happened to me at an
8 older age than ordinary. It traditionally
9 happens to tall, thin, usually white males; a lot
10 of basketball players get it. And it's just
11 something that happens to people in their 20s, it
12 happened to me in my 40s.
13 Q. You're telling us that nobody, even
14 your doctor on down, ever connected smoking with
15 that event?
16 A. No. In fact my doctor told me --
17 again, my doctor knew what my profession was, he
18 said it's unrelated. I remember him saying:
19 It's unrelated to smoking.
20 Q. During your tenure at Philip Morris
21 did you ever serve on a smoking panel?
22 A. Not officially. I was not a
23 registered member of a Philip Morris smoking
24 panel.
25 There was a period of time where I
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1 was curious what the people in the smoking
2 panel -- how they got the cigarettes, the kind of
3 forms that they filled out, the questionnaires
4 and things. And I believe there was a period of
5 time when I asked to be included for a six-month
6 period as if I were on a smoking panel, but I was
7 not officially on a smoking panel.
8 Q. Let's talk about that.
9 A smoking panel is a group of
10 people, many of whom are Philip Morris employees,
11 who were asked to try out various cigarettes;
12 isn't that correct?
13 A. They were asked to volunteer to do
14 it, yes.
15 Q. And they volunteered?
16 A. And they volunteered, yes.
17 Q. And in that context you're telling
18 us you did this on one occasion informally for
19 six months?
20 A. I -- something like that, yes.
21 Q. Do you know when that was?
22 A. Mid '70s.
23 Q. Here in New York?
24 A. Yes.
25 Q. You've never worked in Richmond,
0032
1 have you?
2 A. I've spent a lot of time in
3 Richmond, but I never was assigned to Richmond.
4 Q. During this period in the mid 70s,
5 when you were on this -- informally on the
6 smoking panel, did you fill out the reaction
7 forms that other people did?
8 A. I don't believe I did because I
9 wasn't on the smoking panel. I looked at the
10 forms.
11 Q. Did you smoke the sample cigarettes?
12 A. Yes, I did.

13 Q. Do you recall what kinds?
14 A. No, they're not identified usually.
15 I knew -- I knew what the code
16 numbers meant because I was involved in product
17 development, but the people on the smoking panel
18 would not have known what those code numbers
19 meant on the packages --
20 Q. What did the code numbers mean?
21 A. They meant what brand or what
22 version or what kind of specific differences.
23 Q. What brand was it that you were
24 smoking?
25 A. I don't remember at all.

0033

1 Q. Do you know or did you find out
2 later what changes were made in the cigarettes
3 you were smoking?
4 A. In some cases I may have known, yes.
5 Q. What were they?
6 A. Well, one example would have been
7 that -- I may have smoked a slightly lower tar
8 version of the same cigarette.
9 Another change may have been that
10 you may be smoking the actual production brand
11 now and what your test brand you're smoking
12 against would be a brand that was made with what
13 they anticipated the tobacco blend of the next
14 year's production would have been like.
15 Q. Do you know whether any of the
16 cigarettes that you unofficially sampled were
17 ever marketed?
18 A. I am absolutely certain that some of
19 the cigarettes I smoked were marketed because I'm
20 certain that some of the cigarettes that I smoked
21 were currently -- then currently marketed
22 cigarettes that just had a white wrapper on them
23 instead of their normal label.
24 Q. Putting those aside, were any of the
25 experimental cigarettes that you sampled

0034

1 marketed?
2 A. Let me give you a slightly twist
3 answer. I don't recall whether during whatever
4 period of time that I was a play acting on the
5 smoking panel, I don't know if any of those
6 cigarettes were ever marketed, but I can assure
7 you that in the course of my duties I smoked many
8 test cigarettes that were then subsequently
9 marketed.
10 Q. Just so we understand each other,
11 when you say "play acting" you simply mean that
12 you were -- you don't say you weren't smoking the
13 cigarettes, you simply were not an official
14 member of the panel?
15 A. That's what I meant, that I was
16 getting as if I were a member of the panel, but I
17 did not submit forms back because I was not a
18 member of the panel.
19 Q. Did you do that for a business
20 reason?
21 A. Surely. I was responsible for
22 marketing and I was involved in product
23 development. And as I was sitting in meetings

24 and see how the panel reported on their findings
25 of their work I wanted to better understand how
0035
1 they were -- they received the cigarettes and the
2 kinds of forms and the nature of the questions
3 that they were being asked.

4 Yes, it's definitely a business
5 reason.

6 Q. Did you make any recommendations for
7 changes in the panel process after you did this?

8 A. I vaguely remember that there was
9 one question on the questionnaire that had to do
10 with how they would characterize taste that I had
11 a comment on that I thought needed to be looked
12 at as to whether or not it was giving us really
13 as good an insight into people's taste
14 perceptions, but that's a vague recollection.

15 Q. All right. To your knowledge though
16 the panel approached the testing cigarettes until
17 the time you retired, November of 1997?

18 A. Yes.

19 Q. Did you ever object to the process
20 itself?

21 A. Not that I know.

22 MR. ADELMAN: Let me ask that this
23 might be marked as the first exhibit.

24 (Plaintiffs' Deposition Exhibit 1
25 was marked for identification and is annexed
0036

1 hereto.)

2 BY MR. ADELMAN:

3 Q. Could you please review that to your
4 satisfaction.

5 A. Yes.

6 Q. Have you looked at these two pages
7 of Exhibit 1?

8 You have to say yes or no.

9 A. Yes.

10 Q. Can you identify them, please?

11 A. The covering page is a April 8th,
12 1996 memo from Ellen Merlo to all New York Office
13 and PM USA employees. The subject is new
14 advertising campaign/youth smoking. And the
15 second page is a photostat of an ad -- an
16 advertisement that is headlined Kids Should Not
17 Smoke.

18 Q. The ad "Kids Should Not Smoke," did
19 you review it personally before it was run?

20 A. I believe I probably did.

21 Q. Did you approve it?

22 A. I would have been one of the people
23 who approved it, yes.

24 Q. When was it that -- what Ms. Merlo
25 and her memo call the new advertising campaign
0037

1 regarding youth smoking, when was that adopted by
2 Philip Morris?

3 A. Well, based on the memo, it looks
4 fairly safe to say it was in April of 1996.

5 Q. Were you aware of the new
6 advertising campaign about youth smoking?

7 A. Yes.

8 Q. Did you it?

9 A. Did I implement it?
10 Q. Right.
11 A. No, I did not implement it.
12 Q. What role did you have in it?
13 A. I was the president; I was aware
14 that it was going on and I approved it.
15 Q. And why?
16 A. Why? Well, for starters, the fact
17 that it was clear in 1996 that we had been
18 labeled by those people opposed to cigarette
19 smoking and by politicians and by lawyers as
20 having marketed to kids; and I believe that is
21 absolutely untrue, it is a false accusation.
22 And we created a program called
23 Action Against Access, which was designed to
24 aggressively go after the subject of below legal
25 age access to cigarettes. This ad would be part
0038
1 of the program to communicate our company's
2 position that we do not believe that children,
3 under legal age people, should smoke period and
4 that we were aggressively going after the subject
5 of denying them access to cigarettes.
6 Q. Starting in 1996?
7 A. I believe that we had many other
8 programs before that, which really worked hard at
9 minimizing the access of kids to cigarettes, but
10 since this was related to Action Against Access
11 which was created in 1996, yes, this ad related
12 to that.
13 Q. When you say smoking by kids what
14 age group are you talking about?
15 A. Below legal age.
16 Q. What do you define that to mean?
17 A. Below legal age right now, unless
18 it's changed in the last year is, I believe is 18
19 years of age; below 18 years of age in 47 states
20 and I think in three states the legal age is 19.
21 Q. So at least from 1996 onward it was
22 the position of Philip Morris that people under
23 that age should not smoke?
24 A. That is correct.
25 Q. And from 1996 onward at least it was

0039
1 the position of Philip Morris that it would be
2 wrong to market cigarettes to people under 18,
3 correct?
4 A. Correct.
5 Q. And the Action Against Access
6 program you indicated was in response to
7 criticism?
8 A. It was the evolution of a series of
9 things that we had done over the years that came
10 together in a rather large program. And the
11 reason it became a program that was labeled was
12 it called on states to more aggressively enforce
13 their own minimum age laws and as part of Action
14 Against Access we pledged to work with states to
15 ban vending machines, to eliminate sample
16 cigarettes and to more substantially get
17 retailers to photo ID people who were buying
18 cigarettes.
19 Q. From 1996 onward?

20 A. This program was crystallized in
21 1996. There were other efforts before then that
22 were not called Action Against Access.
23 Q. I want you to tell us what the
24 criticism was that resulted in the Action Against
25 Access program.

0040

1 A. The criticism was, in my mind -- and
2 granted my mind is quite partial on the subject,
3 the criticism generated out of the fact that it
4 became a very politically popular platform to go
5 after the cigarette companies for having marketed
6 to kids in the face of no real evidence out of
7 the companies themselves that marketing the kids
8 was something that the companies did on any kind
9 of basis.

10 Q. Who were the critics?

11 A. President Clinton, Vice President
12 Gore certainly, ASH, GASP, American Lung
13 Association, American Cancer Society, plaintiffs'
14 lawyers, a rather wide array of people who
15 accessed the media very effectively to portray
16 the cigarette industry as an industry that was in
17 almost on a sinister basis seducing kids into
18 smoking.

19 Q. That's a rather formidable group of
20 people, don't you think?

21 A. It's very formidable.

22 Q. You would agree with me that on
23 other issues they don't necessarily agree?

24 MR. HOWARD: Objection to form.

25 MR. ADELMAN: I think that's --

0041

1 I'll withdraw that question.

2 Q. This group of people, starting from
3 the president and vice president to various
4 action groups, don't necessarily disagree on
5 other issues -- excuse me, don't necessary agree
6 on other issues, but they're united on this
7 issue; is that the point?

8 A. I don't know that that's true.

9 Q. Do you think that criticism from
10 that group of people was fair?

11 A. No, I do not.

12 Q. But nevertheless you changed your
13 policies in 1996 to react to it?

14 A. I did not -- I do not consider this
15 to be a see change in policy. I consider it to
16 be a bringing together of a whole variety of
17 actions to unequivocally state that Philip Morris
18 as a company does not believe kids should smoke
19 and wants to work with our critics, those very
20 same people, to toughen up the laws and the
21 programs that will deny kids access to
22 cigarettes.

23 Q. So you agree with the fundamental
24 point of the critics that people under 18
25 shouldn't smoke?

0042

1 A. That was not the fundamental point
2 of the critics. I agree with the point that
3 people under 18 shouldn't smoke. The critics
4 were not saying just that, they were saying that

5 people under 18 shouldn't smoke and the cigarette
6 companies were insidiously were trying to get
7 them to smoke.

8 Q. And you don't think Philip Morris
9 before 1996 was marketing to people under 18?

10 A. I do not think before 1996 -- I do
11 not think that since 1963, when I joined the
12 company, that Philip Morris was marketing to
13 kids.

14 Q. You would agree with me that, in
15 your view, marketing to kids by the cigarette
16 companies would be wrong?

17 A. I believe that a program organized,
18 a strategic tactical effort, to market to kids
19 would be wrong.

20 MR. ADELMAN: Okay. Let me have
21 this marked please as Exhibit 2.

22 (Plaintiffs' Deposition Exhibit 2
23 was marked for identification and is annexed
24 hereto.)

25 BY MR. ADELMAN:

0043

1 Q. Would you please examine Exhibit 2
2 to your satisfaction?

3 MR. ADELMAN: Can we go off the
4 record for a second?

5 MR. HOWARD: Why don't we, and he
6 can have some time to review it.

7 MR. ADELMAN: On that note -- I'm
8 going to show him a number of documents, and when
9 I ask him to review it I want -- I'm going to
10 focus in on a certain pages. So we don't spend
11 it on all of the documents, if that's all right,
12 but I will -- as a general matter, when I ask the
13 witness to review a document -- I welcome him
14 reviewing the whole thing, but I will focus his
15 attention to certain pages so we speed up the
16 process; is that agreed?

17 THE WITNESS: And in return, I
18 will tell you that I will spend some amount of
19 time on a document, like this I've never seen. I
20 will not play the game of spending a lot of time
21 on documents I'm familiar with.

22 MR. ADELMAN: Fine.

23 THE WITNESS: I've never seen this
24 document.

25 MR. ADELMAN: You take all the

0044

1 time you want. But I just want you and your
2 counsel to know that I'll focus in --

3 THE WITNESS: All right. That's
4 fine.

5 MR. ADELMAN: You want to take a
6 break.

7 THE VIDEOGRAPHER: Going off the
8 record, it's 10:51 a.m.

9 (Discussion off the record.)

10 (Recess taken.)

11 THE VIDEOGRAPHER: We're back on
12 the record, it's 10:58 a.m.

13 BY MR. ADELMAN:

14 Q. All right. Sir, we took a break for
15 a few moments here.

16 Did you during that break consult
17 with your counsel about the deposition here?
18 A. I didn't consult. We talked about
19 it, yes.
20 MR. ADELMAN: I would direct
21 counsel and request not have any consultation
22 with the witness during this deposition about his
23 testimony; it's not proper. Will you agree?
24 MR. HOWARD: I just made general
25 comments. I agree, thanks.

0045

1 MR. ADELMAN: So you won't do that
2 any more?
3 MR. HOWARD: No.
4 MR. ADELMAN: All right.
5 BY MR. ADELMAN:
6 Q. Turning your attention to Exhibit 2,
7 have you examined it to your satisfaction?
8 A. I've examined it, yes.
9 Q. Well, to your satisfaction?
10 A. Yes. Generally examined it.
11 Q. All right. It is, is it not, a
12 memorandum from a person named George Weissman to
13 Dr. R. N. DuPuic, D U P U I C, dated October 7,
14 1953?
15 A. That's -- yes.
16 Q. It is and appears to be a document
17 from Philip Morris?
18 A. I don't know that.
19 Q. I'll represent to you that it is.
20 Directing your attention to the
21 middle of the first page, the fourth paragraph.
22 Let me ask you some questions.
23 First of all, this document purports
24 to be a cover for what's called a copy of a
25 preliminary report of the Elmo Roper organization

0046

1 on the first study for Philip Morris, that's up
2 in the first sentence line; do you see that?
3 A. I see that.
4 Q. And then in the paragraph that I've
5 identified for you it says: "These general
6 industry figures indicate that 47 percent of the
7 population, 15 years and older, smoke
8 cigarettes."
9 Have I read that accurately?
10 A. You've read that accurately.
11 Q. Do you know or do you have any
12 knowledge of who Mr. George Weissman was or is?
13 A. Well, this memo was written in 1953,
14 I joined the company in 1963. I do know
15 Mr. Weissman; I have no idea what position he
16 held in 1953.
17 Q. Well, what position did he hold when
18 you were there?
19 A. Mr. Weissman, when I knew him, was
20 the head of Philip Morris International and
21 subsequently became chairman of the board of
22 Philip Morris.
23 Q. This document shows on its face,
24 doesn't it, that in 1953 Philip Morris received
25 information from the Roper organization regarding

0047

1 smoking of people 15 years and older, correct?
2 A. On its face that's what it shows,
3 yes.
4 MR. ADELMAN: All right. May I
5 have this marked as the next exhibit?
6 (Plaintiffs' Deposition Exhibit 3
7 was marked for identification and is annexed
8 hereto.)
9 BY MR. ADELMAN:
10 Q. This is Exhibit 4, correct?
11 I'm sorry, Exhibit 3.
12 Please examine Exhibit 3 to your
13 satisfaction.
14 A. Okay.
15 Q. This is a Philip Morris document, is
16 it not?
17 A. The letterhead says Philip Morris
18 Incorporated.
19 Q. Right. And it's specifically dated
20 September 18, 1956 being a memo from George
21 Weissman to Dr. R.W. DuPuis.
22 Do you know who Mr. DuPuis was?
23 A. No, I do not.
24 Q. The subject of this memo is college
25 survey, correct?
0048

1 A. Yes.
2 Q. Now, in the first sentence it talks
3 about this memo being a cover for a survey that
4 the Elmo Roper has done for us on the college
5 market.
6 Again, this is the Roper survey
7 organization?
8 A. I don't know that. I was not with
9 the company in 1956, but I wouldn't want to argue
10 the point.
11 Q. When you were with the company did
12 you ever become familiar with any work that the
13 Roper organization did for Philip Morris?
14 A. Yes, I did.
15 Q. What type of work did they do?
16 A. Survey work.
17 Q. So this would appear to be a similar
18 survey done in 1956 by the Roper organization for
19 Philip Morris?
20 A. It would appear to be, but I don't
21 know it for sure.
22 Q. Right. Directing your attention to
23 paragraph 1, this is entitled Evaluation of Our
24 Current College Program.
25 What, to your knowledge, was the

0049
1 college program that Philip Morris had?
2 A. I have absolutely no idea. This was
3 seven years before I joined the company.
4 Q. From 1963 onward, to your knowledge,
5 did Philip Morris have a college program?
6 A. No.
7 Q. Sir?
8 A. No.
9 Q. When was it -- well, this memo
10 indicates that there was such a program in 1956;
11 do you know when it stopped?

12 A. I do not.
13 Q. And again, section 1 states as
14 follows: "The failure of our brands to achieve
15 significantly better market shares in the
16 colleges where we have made a special effort than
17 in the colleges where we have not made a special
18 effort indicates to us the need for a
19 re-examination of our college program."

20 Have I read that accurately?

21 A. Yes, you have.

22 Q. Are you aware of that re-examination
23 of the college program?

24 A. No, I'm not.

25 Q. Now, second page, paragraph 5, this

0050

1 Philip Morris document has the heading "Smoking
2 Ages"; do you see that?

3 A. Yes, I do.

4 Q. And it says: The survey indicates a
5 good number of the students started smoking prior
6 to college, 36 percent started by age 16 and 81
7 percent by age 17 or 18.

8 And then it goes on to say: In a
9 way there is a relationship with drinking habits
10 in college as reported in the Yale University
11 study of drinking in college which noted that 79
12 percent of the men who drank and 65 percent of
13 the women reported drinking before entering
14 college. This, of course, raises a policy
15 consideration of where to begin promotional
16 efforts.

17 Have I read that accurately?

18 A. You have read that accurately.

19 Q. While you were working at Philip
20 Morris was there any program in place to market
21 to college students?

22 A. Not specifically to college
23 students, no.

24 Q. What do you mean by that?

25 A. What I mean was we marketed to

0051

1 people 18 years of age and over and I guess you
2 and I could agree that the vast majority of
3 college students would be 18 years of age and
4 over.

5 Q. I don't agree with that.
6 Some of them are under 18, aren't
7 they?

8 A. I said vast majority.

9 Q. But some are under 18?

10 A. Some may be under 18 and, if so, we
11 would not market to them.

12 Q. Was this document here saying
13 anything about limiting marketing to children
14 over 18?

15 A. This document doesn't say anything
16 about marketing. It's a statistical study that
17 reports on the demographics of cigarette
18 consumption, but I don't see anything in here at
19 all that relates to marketing or marketing
20 programs.

21 Q. Let me direct your attention to
22 paragraph 7 that begins by heading "How to Appeal

23 to the College Market."
24 And it says as follows: Certainly
25 in many ways this is to be regarded as a
0052
1 benchmark survey whose ultimate value will
2 increase with later surveys. Yet we do have one
3 hypothesis to offer based on the analysis of the
4 statistics. Our hypothesis is that the way for a
5 cigarette to appeal to college students is for it
6 to be represented to them as a cigarette smoked
7 by young executives and young matrons and career
8 women.

9 Have I read that part accurately?
10 A. Yes.
11 Q. That indicates that there was a plan
12 in conception to market to college students?
13 A. No, it doesn't indicate that at all.
14 It indicates that someone has a
15 hypothesis that that would be the way to do it,
16 but it does not indicate that that hypothesis was
17 accepted or carried out or executed or actually
18 done. It's a hypothesis and --
19 Q. Finish your answer.
20 A. It's a hypothesis. Hypothesis means
21 hypothesis.
22 Q. Is there anything in here that says
23 we should not market to college students?
24 A. No. Is there any reason why college
25 students should not be marketed to?

0053
1 Q. Well -- go ahead.
2 A. They are of legal age. In fact
3 you're dealing in the 1950s here. One would want
4 to be quite careful to explore what the legal age
5 for cigarette consumption that was set by the
6 states themselves was during this period of time.
7 I do not know the states, but I am
8 aware there are a large number of states that had
9 no minimum age or in fact had a minimum age of 16
10 for that purpose, that made it legal to buy
11 cigarettes at that time.
12 So I think trying to identify
13 college students as a group that for some reason
14 was not appropriate to market to seems to me to
15 be somewhat unreasonable.
16 Q. So you're saying that it would be
17 reasonable to market to college students?
18 A. If they're 18 and over.
19 Even when I say that, back in the
20 1950s I believe that there were a large number of
21 states that determined the legal age for smoking
22 was below 18.
23 Q. Was Philip Morris at this period of
24 time, let's take it as the 1950s, interested in
25 marketing to people under 18?

0054
1 MR. HOWARD: Objection, no
2 foundation.
3 You can answer.
4 A. I do not know because I didn't join
5 the company until 1963.
6 Q. Take a look at the exhibit again, if
7 you will.

8 A. Sure.
9 Q. Paragraph 5, first sentence I've
10 already read. And it indicates that it's a
11 survey that was received by Philip Morris from
12 the Roper organization indicated: A good number
13 of the students started smoking prior to college,
14 36 percent started by age 16 and 81 percent by
15 age 17 or 18, correct?

16 A. That's what it says, yes.

17 Q. The reasonable inference from that
18 is that Philip Morris asked the Roper
19 organization to determine the smoking prevalence
20 of people under 18 --

21 MR. HOWARD: Objection.

22 Q. -- and they did?

23 MR. HOWARD: Objection to form.

24 A. I do not know that. I wasn't
25 there. All that I can assume from this is that

0055

1 data was reported.

2 Q. Right. You can also assume, can't
3 you, and taking into interest that you weren't
4 there, of course, that the Roper organization did
5 what it was told and it surveyed smoking habits
6 of people 16 and 17; isn't that a fair --

7 A. Well, not -- I don't want to be
8 argumentative, but a lot of times the Roper
9 organization would go out and do national polls
10 for a cluster of clients at one time. And they
11 may interview all different kinds of people and
12 different clients would say: Give me a tab of
13 this and this and this, so it's not clear that
14 Roper went out and specifically interviewed 16
15 years old on behalf of Philip Morris.

16 They may have gone out and
17 interviewed 16 years old as part of their general
18 survey and Philip Morris may have asked Roper to
19 include a question about smoking in that.

20 Q. That's one possible hypothesis?

21 A. That's mine, yes, sure.

22 Q. But mine is that Philip Morris asked
23 them to survey people 16 and 17; isn't that
24 reasonable?

25 A. That's as reasonable as mine, I do

0056

1 not know the answer.

2 Q. From the perspective of selling
3 cigarettes to people over 18, it is significant
4 to know, is it not, the smoking patterns of
5 people 16, 17 and younger, correct?

6 A. It's important to know.

7 It is an important piece of
8 information not to sell cigarettes to people over
9 18, not to market to people over 18.

10 It is an important piece of
11 information to know if you are trying to predict
12 what the size of the industry will be five or six
13 years out, what your factory capacity needs to
14 be.

15 It is a piece of information that is
16 useful, but it has nothing to do with whether you
17 market to people, how or whether you market to
18 people 18 years of age and older in my mind. I

19 say that not from this document; I say that from
20 my own experience.

21 Q. And indeed that's the focus of my
22 question. Thank you.

23 What you're saying is that from a
24 marketing perspective for adults you need to know
25 something about teen smoking in order to make

0057
1 marketing predictions?

2 MR. HOWARD: Objection.

3 A. No, sir, I'm saying just the
4 opposite. I'm saying that to market to adults
5 you don't need to know anything about teen
6 smoking.

7 Q. I see.

8 A. Now what -- the information related
9 to teen smoking and the incidence of smoking
10 among teens has to do with a statistical
11 projection of the future size of the cigarette
12 industry.

13 It has nothing to do with how you
14 market to people 18 years of age and over, and
15 that I speak from personal experience.

16 Q. Keeping it on your level of personal
17 experience. The reason, is it not true, that
18 your size of the market is effected by teen
19 smoking is you need to know going forward how
20 many smokers there are in the advancing age
21 population to make predictions?

22 A. Well, again speaking from my own
23 experience -- and I say this because I'm aware
24 there are a handful of documents, during the time
25 that I was at Philip Morris that also looked

0058
1 below 18, which I am familiar with those
2 documents through previous depositions, a handful
3 of them -- but I can speak from personal
4 experience and say that those documents or that
5 information relating to the incidence of smoking
6 of people below 18 years of age was not used in
7 the development of marketing strategies,
8 marketing programs, marketing executions or
9 anything to do with marketing. It was
10 information.

11 And in many cases I don't even know
12 why it was generated. It was generated primarily
13 by an individual in Richmond who worked in R&D.
14 My belief is that it was generated by that person
15 as part of his normal demographic analysis and if
16 it was used it was used by the operations people
17 to try and forecast their required capacity in
18 terms of factory production.

19 Q. Who was the person in Richmond you
20 referred to?

21 A. Myron Johnston.

22 Q. And what was his position?

23 A. He was a demographer and
24 statistician in the R&D department.

25 Q. Do you know of any document in the

0059
1 records of Philip Morris that indicates that
2 Philip Morris did not want the Roper organization
3 to survey smoking habits of people under the age

4 of 18?
5 A. I know of some documents that
6 indicate that in one case when Roper did do it
7 that it's identified that this is a break from
8 our traditional practice. Yes, I believe there
9 are documents that show that as a matter of
10 ongoing procedure Philip Morris did not interview
11 people below 18.

12 Q. That wasn't -- my question was: Do
13 you know of anything that indicated that Philip
14 Morris rejected any efforts by Roper to interview
15 people under 18: Please don't do it again, stop
16 it?

17 A. I do not know of a memo that said:
18 Please don't do it again, stop it.

19 I believe there is a memo in which
20 Roper made a recommendation to do that and
21 there's a memo -- an internal Philip Morris memo
22 that said: No, we don't want to do it, the data
23 is useless anyway.

24 Q. Have you seen that memo recently?

25 A. Not recently.

0060

1 Q. When was the memo written?

2 A. I can't even tell you that. I
3 believe it was written by a gentleman named John
4 Zoler. Z O L E R I believe.

5 Q. When did he write it?

6 A. It would have been in the 1970s
7 sometime I believe.

8 Q. When was the first time you saw that
9 memo?

10 A. In preparation for deposition over
11 the last two years.

12 Q. That's the only memo that you know
13 about?

14 A. It's the only one that comes to
15 mind.

16 As I say, there are a number of
17 memos, as I recall it, that point out that
18 talking to people below 18 and research was, in
19 and of itself, a departure from our ongoing
20 procedures --

21 Q. Can you identify those notes?

22 A. No, but I can provide them to you
23 I'm sure.

24 MR. ADELMAN: All right. I would
25 ask your counsel to do that.

0061

1 Are you willing to do that?

2 MR. HOWARD: As a matter of
3 course, yes, but specifically put your
4 recommendation in writing and precisely --

5 MR. ADELMAN: We have --

6 MR. HOWARD: -- what documents
7 you're looking for and we'll comply.

8 You probably have all of the
9 documents. And I know that you will be getting
10 the documents in the general course with an
11 exhibit exchange in the next few weeks, but if
12 you want us to separately identify the ones that
13 Mr. Morgan is talking about I think that can be
14 accommodated.

15 MR. ADELMAN: If you will accept a
16 letter in lieu of process I'll send you a letter
17 requesting the documents that he's referred to in
18 his testimony; is that agreeable?

19 MR. HOWARD: That's agreeable.

20 (INFORMATION REQUESTED: _____
21 _____.)

22 MR. ADELMAN: All right.
23 Can you mark this please as the next
24 exhibit?

25 (Plaintiffs' Deposition Exhibit 4
0062

1 was marked for identification and is annexed
2 hereto.)

3 BY MR. ADELMAN:

4 Q. Could you examine Exhibit 4 to your
5 satisfaction?

6 A. Yes.

7 Q. Have you done that?

8 A. Yes, I have.

9 Q. Have you seen this exhibit before?

10 A. Yes, I have.

11 Q. All right. This is a memo from
12 Philip Morris' files, is it not?

13 A. I don't know that, but -- yes. It's
14 all people whose names I recognize. It doesn't
15 say Philip Morris on the top, yes.

16 Q. Common sense would show you --

17 A. Yes, sir.

18 Q. The author of this is Mr. M.E.
19 Johnston?

20 A. Myron Johnston, yes.

21 Q. Who is R.B. Seligman?

22 A. That would be Dr. Robert Seligman
23 who I believe in 1969, the date of this memo,
24 would have been either the head or the assistant
25 head of the research and development group in

0063
1 Richmond for Philip Morris.

2 Q. In the memo Mr. Johnston mentions,
3 this is the cover memo on page 1, that the memo
4 shows: By sex and individual years of age, the
5 percentage of 13,000 smokers on the POL National
6 Roster who smoke Marlboro (red, green and gold
7 combined); have I read that right?

8 A. Yes.

9 Q. What is the POL National Roster?

10 A. That would be the product testing
11 group.

12 Q. Product testing group of Philip
13 Morris?

14 A. It's a product opinion laboratory.
15 It is -- we talked about it earlier,
16 it's a group of people who evaluate cigarettes.

17 Q. I beg your pardon.

18 Earlier we discussed in your
19 testimony the sample of cigarettes internally by
20 Philip Morris employees.

21 A. Correct.

22 Q. Is the POL National Roster the same
23 thing as the panel of sample smokers?

24 A. No, there were two groups.

25 Q. What is the POL National Roster?

0064

1 A. The POL is a larger group of
2 consumers who evaluate cigarettes, I believe they
3 evaluate other things also.

4 Q. I take it many of these people are
5 not Philip Morris employees?

6 A. I think that's a clear assumption
7 you can make.

8 Q. Well, can you tell us that for a
9 fact, they're not Philip Morris employees?

10 A. I don't know that none of them are
11 Philip Morris employees, but they're not intended
12 to be Philip Morris employees.

13 Q. And again, the general purpose of
14 the POL National Roster is to use that as a data
15 source for information about smoking, correct?

16 A. I believe the general purpose of it
17 is to use it as a product evaluation technique,
18 not for data, but for product evaluation and
19 opinion.

20 Q. That means that the 13,000 smokers
21 in the POL National Roster are given various
22 cigarettes by Philip Morris to smoke; is that
23 right?

24 A. That would be correct.

25 Q. In this particular report

0065

1 Dr. Johnston refers to sex -- by sex and
2 individual years of age, the percentage of 13,000
3 smokers on the POL National Roster who smoke
4 Marlboro; do you have any idea how many people
5 that entails -- covers?

6 A. I'm sorry, I don't understand your
7 question.

8 Q. It was awkwardly put.

9 How many people, if you know, within
10 this 13,000 group of smokers on the POL National
11 Roster smoked Marlboros red, green or gold; do
12 you know?

13 A. I do not know.

14 Q. And the subject of the memo is
15 Marlboro market penetration by age and sex,
16 correct?

17 A. That's the subject, yes.

18 Q. That was something that Philip
19 Morris was interested in obviously?

20 A. Yes.

21 Q. This was during the time that you
22 were the manager of Marlboro, were you not?

23 A. That is correct.

24 Q. Did you review this memo in 1969?

25 A. I don't recall. I wasn't copied on

0066

1 it. It looks like it was internal to the R&D
2 department, so I can't answer that.

3 Q. And then on the second page, if you
4 will, sir, it's a chart referred to in the cover
5 memo of the actual data showing smoking patterns
6 of this group of smokers, male and female; is
7 that correct, on the second page, sir?

8 A. I'm just looking at something.

9 Yes. Yes.

10 Q. And this shows the result of the

11 research by Philip Morris among the percentage of
12 13,000 smokers who smoke Marlboro, correct?

13 A. It shows data from the POL group.

14 Q. Right. And the POL group again is
15 an entity that is used by Philip Morris to gather
16 data?

17 A. That is correct; although I do not
18 believe this data reflects just that.

19 Q. Well, it says it shows by sex and
20 individual years of age the percent of 13,000
21 smokers on the POL National Roster who smoke
22 Marlboro, red, green and gold combined.

23 A. I do not accept that that is what
24 this chart is showing. And I'm saying that --
25 I'm not trying to be difficult.

0067

1 Q. I think you are.

2 A. This chart has come up before, and I
3 said at the time, I believe it was in the
4 Minnesota deposition or whatever, that I would be
5 absolutely shocked if there were people below 18
6 on the POL panel, and this chart caused some
7 confusion on that.

8 I checked back because I was just so
9 taken aback that this chart, at face value, would
10 show that the POL panel had people below 18 on
11 it. And I was very dogmatic wherever that came
12 up because I just simply did not believe it.

13 It turns out that this chart does
14 not reflect information from 13,000 smokers on
15 the POL panel.

16 Q. Well, let me ask some questions.

17 A. Go ahead.

18 Q. You could give your answers. Let's
19 look at the chart.

20 A. Okay.

21 Q. Do you have it there?

22 A. Yes, I do.

23 Q. It shows, does it not, the
24 percentage of smokers who smoked Marlboro by sex
25 and single years of age, isn't that what it says?

0068

1 A. That's what the chart says.

2 Q. And the chart starts at age 15,
3 doesn't it?

4 A. Yes, it does.

5 Q. And it runs all the way, I think, to
6 age -- over 65?

7 A. It's hard to see because it's
8 dirty -- it's 45, 50. It may even go to 70, I
9 don't know.

10 Q. And it shows the smoking percent of
11 both male and female smokers, doesn't it?

12 A. Yes, it does.

13 Q. And from the face of the chart it
14 shows that the testing group goes back to age
15 fifteen, doesn't it, on the face of the chart?

16 A. Well, that's why I'm looking at the
17 memo.

18 Q. Just answer my question and then you
19 can give your explanation.

20 The face of the chart shows, doesn't
21 it, Mr. Morgan, that the testing group, the POL

22 testing group, for Marlboro cigarettes goes back
23 to 15 years of age; am I correct?

24 A. I won't concede that, I'm sorry.

25 Q. Where is it on the chart that it

0069

1 indicates that it doesn't go back to 15 years of
2 age?

3 A. Well, where is it on the chart
4 labeled, on this chart, that it says that this is
5 the POL group?

6 Q. Sir, if you look at the cover
7 memo --

8 A. Oh, I see, you said the chart. And
9 now you're asking me to go back to the cover
10 memo.

11 Q. No. Look, I don't want to argue
12 with you --

13 A. I don't want to argue with you
14 either.

15 Q. -- and I don't want to waste time.
16 We have in front of you a document,
17 Exhibit 4, that has two pages, actually a third
18 blank page.

19 And the first is a cover memo, isn't
20 it?

21 A. Yes, it is.

22 Q. The cover memo. And it explains,
23 for the reader, the chart that's attached to it
24 that's the second page, right?

25 A. Yes, but sir, if I may --

0070

1 Q. Yes? But let me ask my question --

2 A. Okay.

3 Q. -- and you can get all the time you
4 want at the appropriate time.

5 And the cover memo, first page,
6 explains the chart, second page. It indicates,
7 if I must read it again, quote: It shows by sex
8 and individual years of age the percentage of
9 13,000 smokers on the POL National Roster who
10 smoke Marlboro, red, green and gold combined;
11 isn't that what it says?

12 A. Yes, but there's a preceding
13 sentence too.

14 Q. Read it.

15 A. "Some of my early computer printouts
16 of cigarette preferences by broad age groups
17 hinted at some rather interesting patterns, so I
18 ordered more detailed tabulations, and the
19 attached chart is the result."

20 The attached chart refers to
21 computer printouts of cigarette preferences by
22 broad age groups, of his earlier computer
23 printouts; and it says literally "the attached
24 chart is the result." Okay. It shows by sex and
25 individual -- so it is not abundantly clear from

0071

1 the covering memo that this chart is merely a
2 chart of the POL study that you reference.

3 He refers to early tabulations and
4 printouts. The only place he mentions the
5 attached chart is in relation to that. And then
6 when we turn to the chart it does not say: POL

7 panel, POL data; there is no POL on this chart.
8 And I happen to understand how this
9 happened, as I said, from an earlier issue where
10 I got really sort of exercised about suggesting
11 that there were below 18 year old people on the
12 POL panel.

13 Q. You're rather exercised now, aren't
14 you?

15 A. I'm not exercised, I'm somewhat
16 frustrated because I know what the answer is and
17 we're going through --

18 Q. Well, I don't need to have you --
19 you do not have an opportunity to explain.

20 A. Okay.

21 Q. Just let me ask you a question --

22 A. Sure.

23 Q. -- and we can go on. You can give
24 your explanation to your attorney.

25 A. I'm sorry if I'm being rude.

0072

1 Q. You're not at all. You're being
2 emphatic, but you're not being rude --

3 A. Thank you.

4 Q. -- I'd like the record to show that.

5 A. Thank you.

6 Q. The chart has written in hand:
7 Percent of smokers who smoked Marlboros by sex
8 and single years of age; isn't that what the
9 chart is titled?

10 A. Yes, it is.

11 Q. And given your chart here, the chart
12 begins at age 15, correct?

13 A. Yes, it does.

14 Q. And it continues on to ages 16, 17,
15 18, 19, all the way to at least 60, correct?

16 A. Yes, that is correct.

17 Q. Now, what is your explanation for
18 this, if you have one?

19 A. Okay. An explanation, and where I
20 couldn't agree with the specifics of what you
21 said, which you said that this is the 13,000 POL
22 smokers, it is not.

23 The people below 18 on this chart
24 are coming from different data sources than
25 13,000 smokers on the POL. And what he's done to

0073

1 make his analysis is his combined sources of
2 data, and it's not -- it's apple and oranges, but
3 it shows -- the point he was wanting to make,
4 which I will not contest with you, when we get to
5 that point, which is Marlboro had a higher smoker
6 share of the younger you got in group.

7 I just couldn't agree with you this
8 chart showed the 13,000 POL smokers. That's
9 where I --

10 Q. Where does it say, either on the
11 cover memo or on the chart, that the chart is a
12 combination of two data sources; where does it
13 say that?

14 A. It says: Some of my early computer
15 printouts of cigarette preferences by broad age
16 groups hinted at some rather interesting
17 patterns, so I ordered more detailed tabulations,

18 and the attached chart is the result.
19 Q. Right. And what it shows is -- you
20 just read that, that some earlier computer
21 printouts caused him to do this chart.
22 It doesn't say that this chart is a
23 combination. It says that one --
24 A. All right.
25 Q. -- one, excuse me, one data
0074
1 compilation; isn't that correct?
2 A. We could argue about this all day
3 long.
4 The point is I will not agree to the
5 statement that this chart, which shows market
6 share for age 15, is a compilation of the POL
7 smokers on the panel; I just will not agree to
8 that.
9 Q. Even though the chart itself doesn't
10 say anything of that sort, right?
11 A. The chart does not say that it is a
12 compilation of the 13,000 POL smokers. The chart
13 is not labeled, has no reference to POL in it at
14 all.
15 Q. But the cover letter that is
16 attached to the chart says just that?
17 A. No, it does not.
18 Q. It says, sir, it shows, referring to
19 the chart, by sex and individual years of age the
20 percentage of the 13,000 smokers on the POL
21 National Roster who smoke Marlboro, red, green
22 and gold combined; isn't that what it says?
23 A. That's --
24 Q. That's what it says.
25 A. That's what it says.
0075
1 It also shows that the -- reading
2 the sentence somewhat backward -- the attached
3 chart is the result -- only place it says "the
4 attached chart."
5 The attached chart is the result of
6 some of my early computer printouts of cigarette
7 preferences by broad age groups hinted at some
8 rather interesting patterns, so I ordered more
9 detailed tabulations; that's the sentence that
10 refers to the attached chart.
11 Q. Yes, but it reiterates here that the
12 attached chart is a separate event in the other
13 data compilations.
14 Does this Exhibit 4 make you
15 uncomfortable?
16 A. No, not at all.
17 Q. No?
18 A. Not in the slightest.
19 Q. Who is the person who first showed
20 it to you?
21 A. I do not recall.
22 Q. It was in an earlier proceeding?
23 A. Yes.
24 Q. Was it in a deposition or at trial?
25 A. I believe it was in a deposition.
0076
1 Q. Again referring to the chart, you
2 would agree with me that a person looking at this

3 chart and its cover memo could conclude
4 reasonably that it covers smokers from 15 years
5 on, correct?
6 A. I believe it does cover smokers from
7 15 years on.
8 Q. And could conclude reasonably that
9 it covers the percent of 13,000 smokers in the
10 POL National Roster who smoked Marlboro red,
11 green and gold combined, right?
12 A. No. I do not agree with that
13 because the POL can -- do not send cigarettes to
14 people.
15 Q. How do you know that?
16 A. There was a policy.
17 Q. It may have been a policy, but this
18 suggested that was done, doesn't it?
19 A. This does not suggest that that was
20 done.
21 Q. That's your position.
22 A. That is absolutely my position.
23 Q. Do you have any documents in your
24 possession or that you can obtain that show that
25 indeed cigarettes were not sent to people under

0077

1 18 years of age in connection with the POL
2 National Roster?
3 A. I will ask people to -- since I am
4 not with the company I will ask people to see if
5 that can be furnished.
6 MR. ADELMAN: I'm going make that
7 request of your counsel too in a letter.
8 MR. HOWARD: Fine. I'll take it
9 under advisement. I don't know that the
10 existence of specific documents --
11 MR. ADELMAN: I'm not asking you
12 to testify, but you will --
13 MR. HOWARD: I will take it under
14 advisement.
15 (INFORMATION REQUESTED: _____
16 _____.)
17 MR. ADELMAN: Thank you.
18 Could I have this marked please as
19 the next exhibit.
20 (Plaintiffs' Deposition Exhibit 5
21 was marked for identification and is annexed
22 hereto.)
23 BY MR. ADELMAN:
24 Q. This is Exhibit 5. Will you please
25 examine it to your satisfaction?

0078

1 A. I'm familiar with this document.
2 Q. Exhibit 5, is it not, is a memo to
3 Steve Fountaine. Who is Steve Fountaine?
4 A. Steve Fountaine would have been the
5 director of market research.
6 Q. For Philip Morris?
7 A. For Philip Morris.
8 Q. And it's written by Shirley Wilkins
9 and Bud Roper, who are they?
10 A. Well, Bud Roper would be the Roper
11 studies we referenced before and Shirley Wilkins
12 was his president. They're both from the Roper
13 organization.

14 Q. And you, as we discussed, "you"
15 Philip Morris, used the Roper organizations for
16 surveys?
17 A. That is correct.
18 Q. Now, you say you are familiar with
19 this memo.
20 A. Yes, I am.
21 Q. It's dated June 12th, 1970.
22 A. Correct.
23 Q. And you were the director or the
24 manager of Marlboro at that time?
25 A. I was the brand manager on Marlboro.

0079

1 Q. Did you see this memo at the time it
2 was written in 1970?
3 A. I do not believe I did.
4 Q. Was Steve Fountaine working here in
5 New York or was he at the Philip Morris offices
6 in Richmond?
7 A. He would be in New York.
8 Q. What was his position?
9 A. He was director of market research.
10 As I said, maybe vice president of market
11 research --
12 Q. Was he a consultant?
13 Finish your answer, I'm sorry.
14 A. I would guess director. He may have
15 been a vice president.
16 Q. Did you consult with Mr. Fountaine
17 regularly in the course of your duties --
18 A. Yes, I did.
19 Q. -- in managing Marlboro?
20 MR. HOWARD: Let him finish the
21 answer. Take your time.
22 Q. Did you consult with Mr. Fountaine
23 regularly in the course of your duties in
24 managing Marlboro?
25 A. Yes, I did.

0080

1 Q. Now, this memo from Ms. Wilkins and
2 Mr. Roper says several things I want to ask you
3 about.
4 First of all, it says in the first
5 paragraph -- they're talking about discrepancy
6 between market share and the actual shares of
7 Marlboro, and picking up with this phrase: Due
8 to the fact that Marlboro has such a high
9 percentage of its smokers among the types of
10 young people our survey misses of necessity on
11 college students, those in the military and those
12 under 18 years of age. He, referring to
13 Mr. Cullman, requested that research be
14 recommended that would confirm -- or negate --
15 the reason for this discrepancy.
16 Have I read that accurately?
17 A. Yes.
18 Q. Mr. Cullman; who is Mr. Cullman by
19 the way?
20 A. Mr. Cullman would be Joseph Cullman
21 and would have been chairman of the board at that
22 time.
23 Q. Of Philip Morris?
24 A. Of Philip Morris.

25 Q. And this proposal suggested for
0081
1 research is based on Mr. Cullman's remark, they
2 now propose at the bottom of page 1: There are
3 three groups where smoker percentages and
4 Marlboro shares need to be checked -- college
5 students living on campus, young people in the 14
6 to 17 age group and men in the military service.

7 Have I read that accurately?

8 A. Yes, you have.

9 Q. Were you aware of this proposal and
10 discussion about this issue?

11 A. I am not aware of it. I don't think
12 I was aware of it.

13 I would point out that the -- I had
14 mentioned earlier that there would be a number of
15 documents which showed that, as a matter of
16 course, Philip Morris did not survey people; this
17 would be one document I would add to that pile.

18 Where it says the very thing you
19 wrote -- read that: Smokers among the types of
20 young people are survey misses of necessity.
21 This would be one of the documents I would be
22 providing to show you that Philip Morris, as a
23 matter of course, did not survey people under 18.

24 Q. What you've just referred to is the
25 first paragraph?

0082

1 A. Yes.

2 Q. Now let's go on to what Mr. Roper
3 and Ms. Wilkins propose though.

4 A. Yes.

5 Q. And that's on -- the third paragraph
6 and on the second page. They proposed to
7 interview college students living on campus,
8 young people 14 to 17, and persons in the
9 military, correct?

10 A. Yes.

11 Q. And in particular, there's a
12 proposal here about young people 14 to 17 that
13 runs really into the end of page 2 into page 3,
14 correct?

15 A. Part of that three legged group,
16 yes.

17 Q. That's right, and onto page 4.
18 And it concludes by this proposal
19 here, regarding the 14 to 17 year olds, in our
20 opinion this --

21 A. I'm sorry, I'm lost right now.

22 Q. I'm sorry. Page 4?

23 A. Four.

24 Q. In the middle, referring to the 14
25 to 17 old group. "In our opinion, this suggested

0083

1 approach will provide a good reading on the
2 Marlboro share among very young smokers, as well
3 as adding information on college student smoking
4 habits."

5 Have I read that correctly?

6 A. Yes, you have.

7 Q. And then, of course, there's a
8 proposal about military personnel.

9 It shows, does it not, that a

10 proposal is made by Philip Morris management here
11 to specifically survey people under 18; isn't
12 that correct?

13 A. Yes, it is.

14 Q. To your knowledge, was that done?

15 A. I do not know. I get confused
16 between two studies. There is -- I believe this
17 study was not done.

18 Q. Why do you believe that?

19 A. I believe that -- I want to be
20 careful here because I need to go back and look
21 at some things. There was a Roper study that was
22 done that talked to people below 18.

23 Q. When was that done?

24 A. I'm getting confused.

25 But there was a Roper study that was

0084

1 done that talked to people below 18. I do not
2 know whether it was the study that came out of
3 this recommendation.

4 There was also a Roper study that
5 was turned down by Philip Morris saying that the
6 information would be useless anyway, and I'm
7 getting confused now which one was which.

8 Q. Let's see if we can approach it this
9 way: The Roper study that did study and
10 interview people under 18, do you know when that
11 was done?

12 A. I am just -- I'm right now am very
13 confused by the dates and sequencing and I'd hate
14 to testify as to whether this particular study
15 was done or not done.

16 At a break I could check it out and
17 answer, if that's allowable or satisfactory.

18 Q. Well, I just want to ask you some
19 questions now.

20 A. Okay.

21 Q. I'm not at this point asking you to
22 connect this June 12th, 1970 memo, Exhibit 5,
23 with what may or may not be the study you recall.

24 A. Okay.

25 Q. I'm going to just simply ask on the

0085

1 study you recall, okay, was it done during the
2 time you, sir, were managing Marlboro?

3 A. I do not remember the dates of it,
4 I'm sorry.

5 If I had a copy right now of this
6 and the Roper study itself I could answer your
7 question.

8 Q. Well, this means though you have
9 seen that Roper study that studied people under
10 18, correct?

11 A. Yes, I have, sir.

12 Q. When did you last see it?

13 A. I last saw it I guess in Minnesota.

14 Q. Were you asked questions about it?

15 A. Yes, I was.

16 Q. And to your recollection what did it
17 show?

18 A. It showed -- and it's a study that
19 I've said in I believe almost every deposition
20 because I've been asked about it -- it showed

21 that Roper tabulated -- asked questions and
22 tabulated data for smokers under 18.
23 And I have characterized it both, in
24 many ways, an anomaly, a break from our pattern,
25 and something that I am really embarrassed that

0086

1 Philip Morris did.

2 Q. Why are you embarrassed by it?

3 A. Because Philip Morris has said, and
4 I believe as someone whose been responsible for
5 marketing more than almost anybody in the company
6 over this period of time, we do not market to
7 kids; we don't have programs for kids, and we
8 have really carefully avoided even doing research
9 among kids.

10 And this one report is -- has part
11 of it a tab on people under 18 and their smoking
12 habits, that's why I'm embarrassed; because it is
13 an exception to the rule. And it is like a
14 lightning rod the way it's used to suggest that
15 we market to kids.

16 Q. Well, you're embarrassed also
17 because it shows, at least on this occasion,
18 Philip Morris did survey people under 18, right?

19 A. I think that was inappropriate, yes.

20 Q. Did you ever tell anybody at Philip
21 Morris that it was inappropriate to do that?

22 MR. HOWARD: Objection to form,
23 lacks foundation.

24 MR. ADELMAN: To his knowledge.

25 A. I don't know if I specifically

0087

1 objected; but I will tell you this, that I made
2 sure when I was in the position and had the
3 authority that we did not survey people under
4 18.

5 Q. When was that?

6 A. I would say that would have been in
7 1978 or actually -- I really was in a position
8 when I was president in '94.

9 Q. '94 onward?

10 A. Yes. Where I really had the
11 authority to say what we would and would not do.

12 MR. ADELMAN: We have to take a
13 break here to change the tape.

14 THE VIDEOGRAPHER: Going off the
15 record, 11:39 a.m.

16 (Discussion off the record.)

17 (Recess taken.)

18 THE VIDEOGRAPHER: Back on the
19 record, 11:44 a.m.

20 MR. ADELMAN: Counsel has
21 presented me two documents that are labeled as
22 Zoler Exhibit 2 and Zoler Exhibit 19, and both of
23 them have the date of 10/20/98 as the exhibit
24 date.

25 MR. HOWARD: Right. That was the

0088

1 document deposition -- of Mr. Zoler's deposition
2 in this action.

3 MR. ADELMAN: Right. And the
4 documents reflected Zoler Exhibit 2 being a memo
5 from marketing research Mr. Udow to various

6 persons, including Mr. Morgan, on 25 July 1974
7 and the Fountaine memo is dated July 1, 1970.
8 I will receive these and review.
9 MR. HOWARD: Fine. And I think
10 that they will provide a response for your
11 requests for documents that might shed light on
12 the last bit of testimony by Mr. Morgan.
13 MR. ADELMAN: Right. Okay.
14 Let's turn to Exhibit 6.
15 (Plaintiffs' Deposition Exhibit 6
16 was marked for identification and is annexed
17 hereto.)
18 BY MR. ADELMAN:
19 Q. Could you please examine this
20 Exhibit Number 6 to your satisfaction?
21 A. Yes, sir.
22 Q. Can you tell us what Exhibit 6 is?
23 A. No, I cannot.
24 Q. Well, I take it you have never seen
25 it before?
0089
1 A. I don't know whether I've seen it or
2 not, but I cannot tell the source of it.
3 Q. Well it's produced from Philip
4 Morris' files, I'll represent that to you.
5 But generically can you tell us what
6 it is?
7 A. It's a tabulation of demographics of
8 smoking incidence.
9 Q. Is this the sort of study that
10 Philip Morris would commission from time to time?
11 MR. HOWARD: Objection to the
12 form.
13 Q. If you know.
14 A. I do not know what this study is.
15 Q. Have you seen studies like this in
16 the course of your service at Philip Morris?
17 A. Yes.
18 Q. Generally then, what is this, if you
19 can tell us?
20 A. Well, as I said, it's a series of
21 tabular data on smoking incidence by demographic
22 group and would come either from Philip Morris
23 tracking study, a commission study, or sometimes
24 would come from government data, public
25 information.
0090
1 Q. Okay. What's a tracking study?
2 A. A tracking study is something that
3 Philip Morris did. It's a telephone survey of
4 smokers and getting different kinds of
5 information from them about what brand they smoke
6 and how they perceive certain brands and getting
7 demographic information also.
8 Q. Taking page 1 there at the top,
9 there's a quote: "Do you yourself smoke
10 cigarettes, that is, at least a pack a week?"
11 Is that the question that was asked
12 of the respondents on page 1?
13 MR. HOWARD: Object to the form.
14 MR. ADELMAN: If he knows.
15 A. I do not know specifically, but it
16 would appear to be.

17 Q. Okay. Would you turn, please, to
18 Bates marked 2041761795, that page that's part of
19 this exhibit. It's called table 4. Do you see
20 it?

21 A. Yes, I do.

22 Q. Headline at table 4 is "incidence of
23 smoking by Demographic Group."

24 Have I read that correctly?

25 A. Yes.

0091

1 Q. And then next line it says age
2 12-to-17, March '73; have I read that correctly?

3 A. Yes, you have.

4 Q. And then there's another quote
5 there: "Do you yourself smoke cigarettes, that
6 is, at least a pack a week?"

7 And again, does that appear to be
8 the question asked of the respondents on --

9 A. It appears to be.

10 Q. You'll note on this chart, also on
11 the left-hand side, subgroups of people 12 to 13
12 years of age, 14 to 15 years of age, 16 to 17
13 years of age, correct?

14 A. Yes.

15 Q. And their responses are listed too,
16 correct?

17 A. Yes.

18 Q. What in the world is Philip Morris
19 doing, according to you?

20 You said Philip Morris has no
21 interest in gathering information about smoking
22 habits of people 12 to 17 years old in March of
23 1973.

24 A. Well I said -- first of all, I do
25 not know where this is from.

0092

1 Q. Well, Philip Morris --

2 A. I accept that it's from Philip
3 Morris' files.

4 I said to you earlier on, there are
5 a handful of documents that exist that
6 demonstrate that Philip Morris did in fact
7 either -- in the case of the Roper report we
8 discussed before, actually in that case initiate
9 the study of that information; or in the case of
10 Mr. Johnston, which there are several memos from,
11 compiled public information and tabbed below 18.

12 Q. And this is one of them?

13 A. And this is -- I don't know that
14 this is either Mr. Johnston or Mr. Roper, but
15 this would be one of the handful of documents
16 where Philip Morris looked at that information.

17 And since this post dates 1963 I
18 will continue to state, because I know it's the
19 truth, that independent of those pieces of
20 statistical information that they were not used
21 for marketing purposes and that there are --
22 there are no documents that reflect that there
23 were marketing programs, strategies, evaluations
24 of marketing programs.

25 And the plain and simple fact is we

0093

1 did not market to kids, even acknowledging that

2 there are going to be some number of documents
3 that show statistical information relating to
4 below -- smoking by below -- among people below
5 18 is information that exists in Philip Morris'
6 files.

7 Q. Does this document, Exhibit 6, fall
8 under the category of the documents that
9 embarrass you?

10 A. No.

11 Q. This one doesn't?

12 A. It's because I don't know what it
13 is. I don't know --

14 Q. Well, you and I can agree it comes
15 from -- as I say, I represent to you it comes
16 from Philip Morris' files, and it shows clearly
17 Philip Morris acquiring data regarding the
18 smoking of people 12 to 17.

19 A. Well, I don't know if it acquired it
20 or not. Because I don't know -- I know in
21 several of Mr. Johnston's memos that it's U.S.
22 Public Health Service information --

23 Q. Okay.

24 A. -- or Chilton (ph) or the Centers
25 for Disease Control, or things like that.

0094

1 Q. Even if it came from a public source
2 they acquired it, didn't they?

3 A. They acquired; yes, they looked at
4 it and reported it on.

5 Q. Reported on it?

6 A. Yes.

7 Q. What was the information in
8 Exhibit 6 used for?

9 A. Well, since I was at this point
10 probably director of brand management or brand
11 marketing it came through me, I will tell you
12 that this information was not used at all for
13 marketing.

14 Q. By you?

15 A. By me or the marketing organization.

16 Q. So they just threw it away, is that
17 it?

18 MR. HOWARD: Objection to form.

19 MR. ADELMAN: You can answer.

20 A. I said I don't know what it was used
21 for. It may have been used by -- again, during
22 this period of time there was a Richmond factory
23 being built; there was a Cabarus, North Carolina
24 plant being considered.

25 It could have been used by

0095

1 statisticians to try and project the size of the
2 industry five and ten years out so they knew what
3 size plant to build.

4 I don't know; it was not used for
5 marketing.

6 Q. Does it say anywhere on Exhibit 6
7 that it should not be used for marketing?

8 A. No.

9 Q. You don't really know, do you, what
10 Exhibit 6 was used for, do you?

11 A. Actually, I don't know what it was
12 used for because its incidence numbers, it's not

13 brand share numbers.
14 If this had brand share numbers on
15 it and you were talking about people who lived in
16 nonmetro or metro areas and it had brand share
17 numbers on it I would know what it was used for.

18 Q. Does Exhibit 6 trouble you?

19 A. No.

20 Q. You're proud of it?

21 MR. HOWARD: Object to form.

22 A. I didn't say that. It doesn't
23 trouble me.

24 It's part of what I already
25 identified as a handful of documents that have

0096

1 data on them for smokers below age 18.

2 I'm not embarrassed by it. I wish
3 it hadn't happened.

4 And I understand in the context of
5 hundreds if not thousands of market research
6 reports there are this handful of documents that
7 exist; I'm not perfect.

8 Q. Why do you wish it hadn't happened?

9 A. Because I'm sitting here today in a
10 deposition where the cigarette industry and
11 Philip Morris are being accused of marketing to
12 kids and I know we didn't. And these are the
13 kinds of documents that people are building the
14 case on in spite of the fact they have no
15 marketing documents that show programs or
16 strategies to market the kids; and it's sort of
17 an annoyance that these documents exist and
18 become a platform for people to make accusations
19 that are just simply not true and can't be proven
20 other than by suggestion because of these
21 documents.

22 Q. But don't the documents, even the
23 few you reviewed so far, suggest, at least in one
24 perspective, that Philip Morris was marketing to
25 people under 18?

0097

1 A. Absolutely not. It says that Philip
2 Morris as a business, for whatever reasons, was
3 looking at the incidence of smoking among people
4 under 18. There's no suggestion in these
5 documents -- not one single suggestion that I've
6 been shown in five depositions, one trial
7 appearance, there's no suggestion or evidence
8 that Philip Morris marketed to people below 18;
9 there's just not.

10 There are 250,000 marketing
11 documents sitting in a Minnesota warehouse,
12 250,000, and nobody has shown me a document that
13 says Philip Morris marketed to people below 18.

14 Q. Let me ask you a question.

15 A. Yes.

16 Q. I'll put it under the basis of "a
17 cigarette company," not Philip Morris.

18 A. Okay.

19 Q. If a cigarette company, in the
20 period we are talking about, from the '50s
21 through the '90s, were marketing to children,
22 will they document that and keep those
23 documents?

24 A. Well, may I?
25 Q. You can say whatever you want.
0098
1 A. Okay. I'm going to ramble a little,
2 okay?
3 Q. No, I want you to be responsive to
4 the question.
5 A. I will be totally responsive.
6 The answer is that if a cigarette --
7 I should say Philip Morris --
8 Q. No. I'm asking you generally,
9 answer my question.
10 If a cigarette company out there was
11 marketing to children, from the period from
12 the '50s to the '90s, do you think they would
13 have kept the documents in their files?
14 A. I believe that you cannot run a
15 company the size of a cigarette company that has
16 thousands of employees working in marketing and
17 sales -- that it is impossible to run a company
18 and get something accomplished without
19 documentation of it. You cannot verbally run the
20 business. Everything that is done is done. It
21 is a company; it is an industry that has
22 thousands of salespeople, you must communicate in
23 writing.
24 And I will speculate here -- even
25 though I'm not supposed to -- I believe there
0099
1 have been enough lawsuits in this industry and
2 nondestruct orders that the odds of documents
3 being destroyed over a 40 year period are slim to
4 none; and the fact is I have never destroyed a
5 document.
6 Q. I didn't say a word about you, I'm
7 just talking about a cigarette company --
8 A. That's a hypothetical.
9 I can answer about Philip Morris,
10 sir.
11 Q. Okay. What about shipping documents
12 overseas?
13 A. Marketing documents?
14 Q. Any kind of documents.
15 A. What about them?
16 Q. That can be done by a cigarette
17 company.
18 A. It could be.
19 Q. Sure. All right. Do you know a
20 person --
21 A. Let me go back a minute.
22 Q. Go right ahead.
23 A. You understand that instructions to
24 the sales force there are -- in the Philip Morris
25 sales force there are 3,000 copies sent out of
0100
1 instructions on what to do and how to market. I
2 find it very hard to believe that you could, on
3 an organized basis, obfuscate those documents.
4 Q. All right. Sir, do you know a
5 person or did you know a person at Philip Morris
6 by the name of D.L. Gable?
7 A. No.
8 Q. Or a gentleman -- but you do know a

9 person by the name of J. Morgan, that's you,
10 right?

11 A. That's me.

12 MR. ADELMAN: Let me mark this
13 please as the next exhibit.
14 (Plaintiffs' Deposition Exhibit 7
15 was marked for identification and is annexed
16 hereto.)
17 BY MR. ADELMAN:

18 Q. Could you examine Exhibit 7 to your
19 satisfaction?

20 MR. HOWARD: Before we ask any
21 questions, counsel, I see an indication of an
22 attorney on this document and I want to check as
23 to whether if it's among those privileged
24 documents.

25 MR. ADELMAN: Can you identify the
0101 attorney?

2 MR. HOWARD: Sure. Mr. Holtzman,
3 on the top of the page, general counsel of Philip
4 Morris.

5 It does not appear to be on our
6 list. You can go ahead and question him; but in
7 case our list is not complete, again, I don't
8 mean to waive any privilege that we've asserted
9 as to this document.

10 MR. ADELMAN: I'll appreciate
11 that, but I will say for the record I don't see
12 how in the world you can claim privilege.

13 MR. HOWARD: I don't know. I
14 haven't even read the document. I didn't go
15 beyond just seeing Mr. Holtzman's name at the
16 top.

17 MR. ADELMAN: Right, but I'm
18 saying to you, our position is it's in
19 compliance.

20 I don't see how in the world you can
21 raise privilege simply because the name of a
22 general counsel of the company is written on this
23 memo that he didn't write and so forth.

24 MR. HOWARD: And that may very
25 well be why this is not on the privilege log.
0102

1 BY MR. ADELMAN:

2 Q. Mr. Morgan, have you read Exhibit 7?

3 A. I've just read it, yes.

4 Q. All right. Have you seen that
5 before?

6 A. Well I don't remember seeing it, but
7 clearly I must have because I was copied on it.

8 Q. Yes, sir. It is file stamped
9 received October 23rd, 1973; is that right?

10 A. Yes, it is.

11 Q. And you were supervising or managing
12 really Marlboro at that time, correct?

13 A. Maybe not. By then I may have been
14 the assistant director of brand management, but
15 Marlboro would have been under my -- you know,
16 the Marlboro brand manager would have reported to
17 me.

18 Q. Right. What is the reason you would
19 have received a copy of this?

20 A. Because it relates to Winston, which
21 is Marlboro's chief competitor at that point in
22 time.

23 Q. Do you recognize any of the writing
24 or printing on this?

25 A. I recognize the names now that you
0103 have given to me.

2 Q. Writing or printing first, sir?

3 A. I recognize -- yes. I recognize at
4 the very top it says Alex Holtzman underlined,
5 your file, RHC.

6 Q. Right. Who wrote that?

7 A. That would have been Robert Cremin.
8 I recognize the initials, but I also recognize
9 his writing; he was copied on this.

10 Q. What about the next writing, appears
11 to be Jeb Lee?

12 A. Jeb Lee would be John Paul Jeb Lee,
13 who would have been a sales executive in
14 headquarters at that time. I do not know if
15 that's his writing or not.

16 Q. And then there's E.H. Mize.

17 A. That would have been Henry Mize, who
18 is a field sales executive.

19 Q. And then do you recognize the
20 initials below that?

21 A. Well it looks like -- I don't
22 recognize them as handwriting, but it looks like
23 DEG or DLG, which would be D.L. Gable, to whom
24 the memo -- this note was sent.

25 Q. What was Mr. Gable's position?

0104
1 A. Mr. Gable was a sales executive in
2 the southeast, so it would relate to this
3 Knoxville observation that's in the memo.

4 I believe Mr. Gable reported to
5 Mr. Mize. I can't --

6 Q. Did Mize report to you?

7 A. No. None of the salespeople
8 reported to me. They would have reported to
9 either Mr. Gillis or Mr. Jeb Lee.

10 Q. You are copied on this, you say,
11 because of the fact that Winston is involved?

12 A. Yes.

13 Q. Now, this report has the subject
14 "Competitive Activity," that means essentially
15 keeping an eye on what your competitor is doing.

16 A. Correct.

17 Q. In your note, or Mr. Mize reports,
18 that: During this week, which happens to be
19 October 18, 1973, R.J. Reynolds has been using
20 six girls sampling Winston 20's on Cumberland
21 Avenue in Knoxville, the street that runs right
22 through the middle of the University of
23 Tennessee.

24 Mr. Mize notes: It would be
25 possible to sample thousands of people a day here

0105
1 as all the students use this street traveling
2 from class to class. It was advertised and it
3 seemed that everyone in Knoxville is talking
4 about it.

5 Have I read that accurately?
6 A. Yes, you have.
7 I'd like to go back on something
8 that I said since I looked at this. It's more
9 probably that Mr. Mize reported to Mr. Gable at
10 that time --
11 Q. Right.
12 A. -- than vice versa; I think I said
13 it wrong the first time.
14 Q. All right. Now, this is a report of
15 what the competitor was doing, most notably, that
16 R.J. Reynolds is sampling Winstons over at the
17 University of Tennessee; correct?
18 A. On that street; yes, sir.
19 Q. Do you recall any action being taken
20 by you in response to this memo?
21 A. No.
22 Q. Any action taken by Philip Morris in
23 response to this memo?
24 A. Not that I recall.
25 Q. Why did Philip Morris want to know

0106

1 about the activities of the marketing here to
2 young people at college by, in this case, R.J.
3 Reynolds?
4 A. First of all, Philip Morris and I
5 monitored our competitors in all -- if they had
6 started buying billboards on Interstate 95
7 someone would report that.
8 You watch your competitors closely;
9 and promotions at retail, presentations to
10 customers, sampled programs, new promotions are
11 regularly reported on, so I don't take anything
12 unusual or unique to this particular report of
13 competitive activity sitting here today.
14 Q. All right. Sitting here today, do
15 you know whether Philip Morris ever sampled its
16 cigarette products at any university?
17 MR. HOWARD: Objection, time
18 frame.
19 MR. ADELMAN: At any time.
20 MR. HOWARD: I object for lack of
21 foundation, but you can answer.
22 MR. ADELMAN: You can answer.
23 A. I am reasonably comfortable in
24 saying that before I got to the company, when I
25 was in college, that Philip Morris did sample

0107

1 cigarettes.
2 Q. May I just interrupt?
3 What does the generic phrase
4 "sample" mean?
5 A. Give out samples.
6 Q. Give out samples.
7 A. Distribute free samples of its
8 product.
9 Q. And again, using your recollection
10 as a basis, where was that done and to what group
11 of people?
12 A. It was done to -- it was done when I
13 was in college. It was done to people who were
14 in my -- at Princeton called eaton (ph) clubs,
15 not fraternities, which are juniors and seniors.

16 Q. Do you recall personally at
17 Princeton receiving samples from Philip Morris?
18 A. No, not from Philip, not at all.
19 Q. Or any of the cigarette companies?
20 A. I believe I remember cigarette
21 salespeople giving out samples, yes.
22 Q. You were going to continue, I
23 believe, and tell us your recollection of Philip
24 Morris doing sampling before your joining the
25 company.

0108

1 A. I'm going to shift now to after
2 joining the company.
3 Q. Before you do, just so we can pin it
4 down, do you have any knowledge of Philip Morris
5 doing sampling before you joined the company?
6 A. Not from Philip Morris sampling --
7 no, I don't.
8 Q. Did Philip Morris do any sampling
9 after you joined the company in 1963?
10 MR. HOWARD: Sampling on college
11 campuses or any sampling?
12 MR. ADELMAN: Sampling on college
13 campuses.
14 A. Sampling on college campuses; I do
15 not recall any programs of sampling on college
16 campuses.
17 Q. Did they do sampling of any sort?
18 A. Yes, a lot of sampling.
19 Q. To what groups?
20 A. Adult smokers, in shopping malls;
21 shopping malls, when new brands were introduced
22 you would put people on busy street corners and
23 hand out the little four packs of the new brand.
24 Yes, it did a lot of sampling.
25 Q. Did it ever do any sampling to

0109

1 people under 18?
2 A. There are policies, programs,
3 manuals and procedures that said: Do not sample
4 to people below 18 and do not sample to people
5 below 21, do not sample to nonsmokers; that was
6 the policy, program, and procedure.
7 I am certain, since the world is not
8 perfect, that -- if you're asking me to say
9 that: Philip Morris ever give a sample or a
10 representative of Philip Morris ever give a
11 sample to someone below 18 --
12 Q. Yes.
13 A. -- I can't swear to that.
14 But I can tell you that the programs
15 and the instructions -- and I can also tell you
16 that there were samplers who were fired for not
17 following procedures relating to asking people
18 whether they smoked.
19 Q. So it might have happened that the
20 samplers were giving to children under 18 the
21 Philip Morris cigarette samples?
22 A. It may have happened.
23 Q. Do you know of any documents that
24 show that?
25 A. No. I don't know of any documents,

0110

1 but I am aware, during the last 15 years -- I
2 can't get even close to even the time frame --
3 that occasionally someone would call in and say
4 that they objected because their kid got hold of
5 some cigarettes, but it wasn't specifically from
6 Philip Morris sampling.

7 Q. Are those documented?

8 A. I don't know. I just -- I'm sorry,
9 I don't know.

10 Q. Back to Exhibit 7, from the text
11 itself, you're focusing on what R.J.R. allegedly
12 did.

13 Am I to understand, or did you
14 understand, from this that R.J.R. had six girls
15 or young ladies out there handing out cigarettes,
16 this is R.J.R. at this point?

17 A. Well, six women. It says "girls,"
18 but then I have no way of knowing what the age
19 was.

20 Q. Well, in the 1973 time frame they're
21 talking about young women.

22 A. Actually, if you'll allow me this,
23 we always -- I just remembered the jargon.

24 When you hired people they were
25 called sampling girls; they could be 50 year olds

0111

1 or 40 years old, they would still call them
2 sample girls. That was sort of just the phrase
3 that was used. So I would guess that it's --

4 Q. You're not telling us that R.J.
5 Reynolds had 50 year old women out there handing
6 out cigarettes on the University of Tennessee
7 campus, are you?

8 A. I'll tell you --

9 Q. Are you?

10 A. -- well, first of all, it doesn't
11 say that it was on the campuses, it was on the
12 street. But I will tell you this: Philip Morris
13 had plenty of 40 and 50 year old women and men
14 sampling its cigarettes; it had organized
15 sampling programs, plenty of them.

16 Q. The logical sense of this is that
17 these are young girls employed not by you, but
18 R.J. Reynolds in this case, sampling Winstons at
19 the University of Tennessee?

20 A. No, I don't -- I'm sorry, I don't
21 accept that.

22 Q. You don't agree with that?

23 A. No, I don't. What I don't agree to
24 is that when -- your characterization is that
25 these were young girls, I don't agree with that

0112

1 statement.

2 Q. Who is Frank Ryan?

3 A. I am not sure I know who Frank Ryan
4 is. I believe Frank Ryan was in the research and
5 development department in Richmond, but I am not
6 certain about that.

7 Q. How about William L. Dunn? D U N N.

8 A. Bill Dunn was with the research and
9 development group in Richmond.

10 Q. In particular, Mr. Dunn was there
11 until June of 1973 and July of 1974, correct?

12 A. I don't know that for a fact, but it
13 seems right.

14 Q. Do you know whether it was proposed
15 by Philip Morris to deal with the problem of
16 children's -- children's hyperkinesia or
17 hyperkinetics by exposing them to cigarettes?

18 A. I do not know that.

19 Q. Would you approve of such an
20 activity?

21 A. Would I approve of such an
22 activity?

23 Q. Right.

24 A. When, how; would you ask the
25 question more specifically?

0113

1 MR. ADELMAN: All right.

2 Let me mark this as the next

3 exhibit.

4 (Plaintiffs' Deposition Exhibit 8
5 was marked for identification and is annexed
6 hereto.)

7 THE VIDEOGRAPHER: Going off the
8 record, the time is now 12:11 p.m.

9 (Recess taken.)

10 MR. ADELMAN: Back on the record.

11 THE VIDEOGRAPHER: Back on the
12 record, it's 12:14 p.m.

13 BY MR. ADELMAN:

14 Q. All right. I've handed you
15 Exhibit 8, which I will identify as a
16 confidential report from a Mr. Frank Ryan and
17 Mr. W. L. Dunn dated August 2, 1974.

18 And I've asked you to review Bates
19 pages 8152 to 8155; have you done that?

20 A. 8151.

21 Q. 8151 to 8155.

22 A. Right.

23 Q. Have you done that?

24 A. Yes, I have.

25 Q. Do you recognize this document?

0114

1 A. No, I don't.

2 Q. Have you ever seen it before?

3 A. No, I don't believe I have.

4 Q. Let's cut through this.

5 This was prepared by one of the
6 researchers at the Philip Morris research center
7 down in Richmond, correct?

8 A. I believe so. Believing that Frank
9 Ryan was with R&D, yes. I have every reason to
10 believe you're right.

11 Q. Turning now to those pages, 8151 to
12 8155, let me ask you these questions: That part
13 of the document talks about "Projects in the
14 Concept Phase"; thoughts were advanced here for
15 possible research, correct?

16 A. Yes.

17 Q. And the predicate of this part of
18 the memo is "Smoking and Personality," and the
19 text at the beginning says: We are interested in
20 finding subgroups of people who are benefited by
21 smoking, and we are also interested in accounting
22 for the often reported differences in personality

23 scores between smokers and nonsmokers.
24 Have I read that correctly?
25 A. Yes, you have.

0115
1 Q. And it says: Therefore we are
2 considering a prospective study identifying a
3 group of children whom we think are apt to become
4 smokers.
5 Have I read that correctly?
6 A. You have read that correctly.
7 Q. And then, going through the next
8 pages, and you tell me if I am wrong here, the
9 proposal -- and I stress it's a proposal here, on
10 the face of this, is to identify hyperkinetic
11 children.
12 Do you know, from your lay
13 experience, what a hyperkinetic child is?
14 A. I have two daughters and, although
15 neither one of them were -- was hyperkinetic, and
16 I've seen periods of it, yes.
17 Q. But what is it, to your knowledge?
18 A. Well, to my knowledge, as a layman,
19 it is just children who are -- I'd use the word
20 hyperkinetic, extremely active, somewhat
21 agitated, and I guess what parents call brats.
22 I don't know, but it's -- I assume
23 it's a psychological problem, I don't know that.
24 Q. Right. Back to the proposal here,
25 on page 10, after identifying hyperkinetic
0116
1 children in the third paragraph it says, quote:
2 We don't propose giving cigarettes to first
3 graders, of course, but we think that it is quite
4 possible that as such children reach adolescence
5 at least some of them will find that smoking
6 products -- for them -- the advantage of
7 improving their ability to concentrate.
8 I didn't read that right.
9 A. No, you didn't.
10 Q. Some of them will find that smoking
11 produces -- for them -- the advantage of
12 improving their ability to concentrate.
13 A. That's the correct reading.
14 Q. And then it goes in paragraph --
15 page 11, second paragraph, discussing there how
16 to spot such children and identifying what they
17 do.
18 It says: Many of these
19 characteristics of those of hyperkinetic kids
20 remind us of smokers who are often described as
21 extraverts, anti-social and as overtly affected
22 by external events, as impulsive, as more nervous
23 and emotional, as active and energetic, as having
24 higher anxiety levels and as earning lower grades
25 in school.
0117
1 Have I read that part of this --
2 A. No, you haven't.
3 Q. Okay.
4 A. You said "overtly affected," it's
5 "overly affected."
6 Q. You're right, "overly affected."
7 With that correction, have I read

8 that right?
9 A. Yes, you have.
10 Q. And then on page 12 finally the
11 proposal says: We are considering a long term
12 prospective study in which we identify large
13 groups of primary school hyperkinetics and a
14 large control group of nonhyperkinetics and then
15 several years later observing the percentage of
16 smokers showing up in the two groups.
17 Now, the last page, 13, says: Among
18 the plans: The hyperkinetic children idea will
19 be pursued. Further investigations into the
20 parallels between the "smokers personality" and
21 hyperkinetic personality will be made. It may be
22 possible to detect among smokers in the lab, some
23 characteristics of the hyperkinetic: e.g.,
24 distractibility and restlessness, et cetera.
25 Have I read that correctly?

0118

1 A. Yes, you have.
2 Q. Now, the sum and substance of this
3 is that the proposal was to examine children,
4 school kids, little kids, to see what their
5 personality consisted of if they were
6 hyperkinetic and try to somehow track these
7 people as they grow older to see if they would
8 become smokers; isn't that what this is referring
9 to?
10 A. Well, I don't know, because what you
11 didn't read --
12 Q. I didn't mean to take it out of
13 context. Is it correct?
14 A. I don't know. I'm just -- there's a
15 whole section here that talks about Virginia
16 mandating, identifying pupils with behavioral
17 problems.
18 And the way you said it to me is
19 that Philip Morris would study these kids, I'm
20 not sure that's what this says. It says that
21 Philip Morris would have access to existing data
22 that the school system generated on them.
23 Do you see what I'm saying?
24 Q. Where does it say that?
25 A. Page 11. The first paragraph on

0119

1 page 11, it talks about Myklebust Pupil Ratings.
2 Q. Oh, sure.
3 A. So the way you asked the question
4 was Philip Morris would grab hold of these kids
5 and do evaluations on them and things; I don't
6 think that's what it's saying.
7 Q. No, I didn't mean to say that.
8 A. I think that's what you said.
9 Q. Let me correct myself then.
10 The gist of the proposal is with
11 that data produced by the public school people
12 Philip Morris wanted to track them into the years
13 when they became smokers to see whether they
14 developed a smoker's personality, right?
15 A. Yes.
16 Q. Do you know whether this proposal
17 was ever put into effect?
18 A. I do not know.

19 Q. Would you have approved it if it
20 were put on your desk?
21 A. Well, let me answer that this way:
22 If this proposal had come on my desk when I was
23 in a position to approve it, which would be 1994
24 to 1997, I would have never approved it.

25 Q. Why not?

0120

1 A. Because I'm a -- I'm a 30 year
2 veteran of the issues around cigarettes, the
3 sensitivities around cigarettes. And I believe
4 that no matter what a behavioral scientist, which
5 these gentlemen I believe were, would have
6 thought the value and interest of that work was
7 from a behavioral sciences standpoint, there is
8 no way in the 1990s that I would approve that
9 just based on the appearance of it.

10 It is yet again something that's
11 talking about kids; didn't talk about giving
12 cigarettes to kids, didn't talk about trying to
13 influence them to smoke. It just said let's
14 observe and when -- you know, if and when they
15 become smokers let's see if there are any
16 correlations. From a scientific standpoint that
17 seems totally reasonable as a scientist.

18 And in the 1970s -- sorry I'm being
19 so long-winded, in the 1970s, when this was done,
20 I'm not so sure that that looks like as
21 outrageous a proposal as it does to you and me
22 sitting here today.

23 I would not approve it today. I
24 don't know if I would have been smart enough in
25 the 1970s to understand what that would appear

0121

1 like 20 years later. So I probably -- I know I
2 would not do it today; I can't answer yes or no
3 in the 1970s.

4 I'm sorry it's long winded, but it's
5 not really a yes or no answer.

6 Q. Are you saying that in the 1970s you
7 might have approved this?

8 A. I'm saying in the 1970s -- for a
9 group of scientists who were told to be pure and
10 independent and do what's right and learn what
11 they can learn, I am saying that since it didn't
12 involve kids smoking, it is merely an observation
13 that I could conceive -- if I had been president
14 of Philip Morris in the 1970s I may have approved
15 it for the sake of looking like interesting
16 science, having no perception of what that
17 document would look like in 1997.

18 Q. Do you know whether after it was
19 proposed in 1974 actually it was ever put into
20 effect?

21 A. I do not know because it wasn't my
22 area.

23 Q. Who would know that?

24 A. Well, let's assume Mr. Ryan would
25 know it. Mr. or Dr. Dunn would know it.

0122

1 Q. Is he still at Philip Morris?

2 A. I don't believe either of them -- I
3 do not know, but I don't believe either of them

4 are with Philip Morris.
5 Let me just look down here. I don't
6 recognize -- I would say Ryan Dunn would be your
7 best shots.
8 Q. Can you give us their first names?
9 A. Frank Ryan and William Dunn.
10 Q. Are they still -- either of them
11 still with Philip Morris?
12 A. I do not know.
13 Q. Thank you.
14 Who is Mr. Jay Zola?
15 A. Zoler.
16 Q. Zoler.
17 A. John Zoler was someone who I believe
18 you questioned -- or your firm deposed. He was
19 the director of market research in New York for
20 Philip Morris USA or Philip Morris Incorporated.
21 Q. During what period of time?
22 A. Wow. '74, '74 or 5 to '78, '79
23 or '80. I'm guessing at that.
24 Q. Did he report to you?
25 A. He did. He did during the late

0123

1 1970s when I was executive vice president of
2 marketing and sales.
3 Q. What is a tracking search?
4 A. We talked about that earlier. That
5 is when Philip Morris would telephone interview
6 adults to determine their smoking preferences, in
7 terms of brand and things like that.
8 Q. Adults?
9 A. Adults.
10 Q. And it was never done for children
11 under 18?
12 A. The tracking study I do not believe
13 was done for people under 18; one Roper study,
14 there's another study that I know of.
15 I don't believe the tracking study
16 was. It may have been once, I don't remember.
17 But as a matter of policy and procedure on an
18 ongoing basis the tracking study that Philip
19 Morris conducted was done of people 18 and
20 older.
21 Q. Because you said earlier it would be
22 wrong to do a tracking study for people under 18,
23 right?
24 A. I said it would be a -- well, it
25 would be wrong in the sense that it would be a

0124

1 counter to the ongoing procedures and policies,
2 in and of itself is -- since the government does
3 it. The University of Michigan does it.
4 Q. The government doesn't sell
5 cigarettes, sir.
6 A. Well, okay.
7 Q. Let's talk about that.
8 A. I don't know that "wrong" is the
9 right word. It's something that should not be
10 done as a matter of -- unless you're using it for
11 projections of industry size there's no --
12 Q. What are -- go ahead, finish your
13 answer.
14 A. -- there's no relevance to it.

15 Q. What are tracking studies done for?
16 A. Tracking studies -- most commonly,
17 tracking studies -- if I were a brand manager and
18 I got the tracking study data and I knew that --
19 let's say I'm a Parliament brand manager and I
20 knew that Parliament had a higher market share in
21 metropolitan areas than in rural areas; or I knew
22 it had a higher market share among smokers 45 to
23 55, 35 to 45; or I knew that it had a
24 disproportionate high share among African
25 Americans, or whatever, it would tailor my media
0125

1 purchases. It would tailor the kinds of stores I
2 would want to put displays in and run promotions.
3 A tracking study is a diagnosis of a
4 picture of a brand and the picture of the
5 industry.

6 Q. For marketing purposes?
7 A. In the things I just mentioned, yes.
8 Q. But for marketing? It's marketing?
9 A. Yes.

10 MR. ADELMAN: Mark this, please.
11 (Plaintiffs' Deposition Exhibit 9
12 was marked for identification and is annexed
13 hereto.)

14 BY MR. ADELMAN:

15 Q. Please look at Exhibit 9 to your
16 satisfaction.

17 A. Okay.

18 Q. Have you ever reviewed Exhibit 9
19 there?

20 A. I've looked at it here, yes.

21 Q. This is a Philip Morris memo from N.
22 Holbert to Mr. J. Zoler, right?

23 A. Neil Holbert to John Zoler.

24 Q. Do you know Mr. Holbert?

25 A. Yes.

0126

1 Q. What was his position?

2 A. He worked for Mr. Zoler.

3 Q. In what department?

4 A. Marketing research.

5 Q. Marketing, right?

6 A. Marketing research.

7 Q. This is October 13th, 1976?

8 A. Correct.

9 Q. Have you ever seen this memo before?

10 A. Yes.

11 Q. When?

12 A. In preparation for deposition.

13 Q. For this deposition?

14 A. I believe this was one of the memos
15 I looked at yesterday, yes.

16 Q. Had you ever seen it before
17 yesterday?

18 A. Yes.

19 Q. When? When was the first time you
20 saw it?

21 A. I don't know.

22 Q. Well, did you see it on or about
23 1976?

24 A. No.

25 Q. Let's look at the memo. The subject

0127

1 is teenage smoking, correct? Right?
2 A. That's what it's labeled, yes.
3 Q. Well there we go.
4 Here is a specific statement about
5 teen smoking by people in marketing research
6 there at Philip Morris, correct? Can't deny
7 that.
8 A. That's what the subject is labeled.
9 Q. Right.
10 A. The subject is really the tracking
11 study.
12 Q. Right. And then let's read the
13 text.
14 A. Okay.
15 Q. We have an operational decision to
16 make on what age to use as a low-end in working
17 out incidence, consumption, and brand usage
18 patterns in connection with our '77 tracking
19 study. Here are some facts.
20 And then there's a chart set up
21 there: Percent in group who are regular
22 smokers. And the question presented is: One or
23 more cigarettes per week or one or more
24 cigarettes per day.
25 A. Excuse me, you missed something.

0128

1 You missed something.
2 Q. And defined by HEW in this study as,
3 correct.
4 A. HEW; Health, Education and Welfare
5 Government Agency.
6 Q. Government data.
7 A. Right.
8 Q. And there it goes all the way from
9 18 on down to 12 years of age.
10 And then he concludes by saying:
11 These data suggest that we use age 15 as a base.
12 May I have your reaction. Thank you,
13 Mr. Holbert.
14 A. Correct.
15 Q. Now, let's be clear here. The
16 tracking study is done or was done by Philip
17 Morris, correct?
18 A. That is correct.
19 Q. What HEW contributes is the
20 definition of regular smokers, correct?
21 A. No, it contributes these numbers.
22 Q. Are you saying that the listing from
23 12 to 18 years of age are HEW information?
24 A. That's what I'm saying.
25 Q. All right. And the proposal by

0129

1 Mr. Holbert then is to, in the Philip Morris
2 tracking, go down to 15 years of age, right?
3 A. That is correct.
4 Q. Was that done?
5 A. I do not believe so.
6 Q. Why do you believe that's not so?
7 A. Because, as I said, I believe that
8 on an ongoing basis the Philip Morris tracking
9 study talks to people 18 years of age and over.
10 Q. I know.

11 A. This is a recommendation by
12 Mr. Holbert. My belief is that it was turned
13 down.
14 Q. Who turned it down?
15 A. It would have been Mr. Zoler I
16 believe.
17 Q. Is Mr. Zoler still with the company?
18 A. No.
19 Q. Where is he, do you know?
20 A. I don't know. You deposed him, I
21 don't know where is he.
22 Q. I didn't deposed him.
23 A. Well, your firm did.
24 MR. HOWARD: Your co-counsel in
25 this case.

0130

1 THE WITNESS: A co -- somebody.
2 We looked at a -- we talked about an exhibit from
3 Mr. Zoler's deposition.
4 Q. Right. Okay. To your knowledge this
5 was never approved?
6 A. To my knowledge it was never
7 approved.
8 Q. But that means it could have been
9 approved and you didn't know about it.
10 A. Could have been approved and I
11 didn't know about it; but there would be a 1977
12 tracking study that was published and would prove
13 that to you and me both.
14 Q. But you agree with the first point,
15 it could have been approved and you didn't know
16 about it.
17 A. It could have been approved and I
18 didn't know about it.
19 Q. Would you have approved it if it had
20 reached your level in 1976, to run a tracking
21 study down to 15 years of age?
22 A. Absolutely not.
23 Q. For the same reasons you've stated
24 before?
25 A. Yes.

0131

1 Q. Do you recall any discussion at your
2 level in 1976 regarding the bottom age for the
3 tracking study or studies that Philip Morris
4 performed?
5 A. No, because that really wasn't my
6 area that I was involved in so I wouldn't have
7 been involved in these discussions.
8 Q. Well you were in charge of
9 marketing.
10 A. 1978.
11 Q. What was your job in '76?
12 A. Assistant director of marketing.
13 Q. I'm sorry?
14 A. Director of brand manager or
15 assistant director of marketing, so I'm not sure
16 of when that switched over.
17 Q. According to you, this would have
18 been -- this poll to go down to 15 years of age
19 would have been a rather radical change of
20 practice in the '70s, correct?
21 A. As I remember it, that would have

22 been -- I don't know if it's radical, it would
23 have been a change.
24 Q. And something of that nature would
25 have been brought to your attention, would it
0132
1 not, in 1976?
2 A. Not necessarily. I was in brand
3 management.
4 Q. You don't know whether this was
5 actually acted upon either by Mr. Holbert or
6 Mr. Zoler?
7 A. I do not, but it's certainly
8 demonstrable whether it was or not.
9 MR. ADELMAN: Let me have this
10 marked as the next exhibit, please, which will be
11 Exhibit Number 10.
12 (Plaintiffs' Deposition Exhibit 10
13 was marked for identification and is annexed
14 hereto.)
15 THE WITNESS: I'm sorry.
16 BY MR. ADELMAN:
17 Q. Have you read Exhibit 10 to your
18 satisfaction?
19 A. Yes, I have.
20 Q. Let me establish again. This is a
21 Philip Morris memo, is it not?
22 A. Yes.
23 Q. From Mr. Ryan and Mr. Johnston to
24 Mr. Dunn?
25 A. Right.
0133
1 Q. The subject is teenage smoking.
2 A. Correct.
3 Q. And the date is April 8, 1976,
4 right?
5 A. Yes.
6 Q. And then the memo, in its body,
7 recounts what Messrs. Ryan and Johnston refer to
8 as: Recent press reports indicating an upsurge
9 in the proportion of teenage smokers with the
10 increase being particularly high among young
11 teenage girls, correct?
12 A. Correct.
13 Q. Have you ever seen this before, this
14 memo?
15 A. I think I have, again, in
16 preparation for deposition, not recently.
17 Q. Let me see if I can clarify that.
18 When is the first time you saw this?
19 A. In preparation for deposition in the
20 last two and a half years.
21 Q. I see. But not before then?
22 A. No.
23 Q. This again reports to Mr. Dunn
24 smoking patterns for, in this case, both male and
25 females from ages 17 to 12, doesn't it?
0134
1 A. From press reports, yes.
2 Q. From press reports?
3 A. Yes.
4 Q. Why is this of concern to Philip
5 Morris, the smoking patterns for people 12 to 17
6 years old?

7 MR. HOWARD: Objection, no
8 foundation.
9 MR. ADELMAN: If he knows.
10 A. I do not know, except to, again, be
11 somewhat repetitive and say that this group in
12 Richmond that is not connected to marketing, in
13 research and development, 500 miles away, that
14 Messrs. Dunn and Ryan and Myron Johnston looked
15 at a whole variety of things. And we're looking
16 at those documents that looked at age
17 demographics; and specifically we're looking at
18 those documents which focused on younger aged
19 demographics.
20 They also, I'm sure I've seen, had
21 documents that have looked at people over 55 and
22 what was happening to them.
23 Q. Well let's talk about this one, sir.
24 A. Right. My belief is that this
25 information is -- was used for trying to
0135
1 establish trends in the size of the cigarette
2 industry five and ten years out and largely for
3 operations capacity considerations.
4 It was not used by marketing, I can
5 tell you that because I was marketing. And I did
6 not see the memo and I surely did not use it.
7 Q. You mean -- what you're saying is
8 that this was used so that the manufacturing arm
9 would know how many cigarettes to make in the
10 future based on the pattern of smoking by people
11 12 to 17?
12 A. I'm saying that understanding what
13 percentage of people smoked at what ages could be
14 useful in extrapolating predictions five and ten
15 years out for the size of the cigarette
16 industry.
17 Q. Is there anything in the memo here
18 that says that?
19 A. No.
20 Q. Who is Mr. R. Seligman?
21 A. Mr. Seligman would have been the
22 head of research -- he and Mr. Wakeham,
23 Dr. Seligman and Dr. Wakeham would have been the
24 two heads of research and development.
25 Q. Down in Richmond?
0136
1 A. In Richmond.
2 Osdene, Thomson, Daniel and Levy all
3 would have been in Richmond too, so this is a
4 Richmond circulated memo.
5 Q. Well, you told us earlier you spent
6 a lot of time in Richmond yourself.
7 A. I go to Richmond about one day a
8 month.
9 Q. This material in this memo,
10 notwithstanding your point, could be used in
11 marketing?
12 A. How?
13 Q. I say it could be.
14 A. I don't believe that. How could it
15 be used?
16 Q. If you're marketing to people under
17 18?

18 A. What's in it that you would use in
19 marketing?
20 Q. It shows, doesn't it, the pattern of
21 smoking by particularly teenage girls in that age
22 group, doesn't it?
23 A. How is that useful?
24 I'm sorry, I'm asking the
25 questions. I even know I'm not supposed to do
0137

1 that.
2 Q. You're well prepared.
3 A. No. No. I would consider this memo
4 to be useless.
5 As a marketing executive, if I saw
6 this memo I would consider it to be useless, with
7 one possible exception, which would be, if I read
8 it right -- let me just look at it again.
9 Yes. If I read it right, that in
10 the age group 18 to 24 where we market -- and let
11 me see if I can say this clearly, in the age
12 group 18 to 24 we market, which this group will
13 be in six years, that they're looking at -- you
14 agree?

15 Q. You go ahead.
16 A. Okay. In six years this group
17 that's reported here will be 18 to 24.
18 The only useful marketing
19 information this document would be at that point
20 that the ratio of male and female smokers may be
21 different than it is today in that age group,
22 that would be the only useful piece of
23 information.

24 Q. If hypothetically, hypothetically,
25 people under 18 acquired this smoking habit, it's
0138

1 reasonable to assume that they would continue to
2 smoke into their mature years?
3 A. That is a reasonable assumption.
4 In spite of the fact that 50 million
5 people have given up smoking, that is a
6 reasonable assumption.

7 THE WITNESS: Can we take a lunch
8 break now, or is there a better time for you?

9 MR. ADELMAN: Off the record.

10 THE VIDEOGRAPHER: Going off the
11 record, it's 12:38 p.m.

12 (Discussion off the record.)

13 MR. ADELMAN: Counsel agreed with
14 the witness to break for lunch for one half hour.

15 MR. HOWARD: Very well.

16 THE VIDEOGRAPHER: Off the record,
17 12:40 p.m.

18 (The deposition of JAMES J. MORGAN
19 was adjourned at 12:40 P.M., for a luncheon
20 recess.)
21
22
23
24
25
0139

1 APPEARANCES OF COUNSEL:
2

3 (P.M. SESSION)

4
5 ROGER M. ADELMAN, ESQ.

6
7 ALAN B. HOWARD, ESQ.

8
9 ADAM J. SCHLATNER, ESQ.

10
11
12
13
14
15
16 ALSO PRESENT:

17
18 BART TARULLI, VIDEOGRAPHER

19
20
21
22 REPORTED BY:

23 ELIZABETH DAVILA

24
25
0140
1 (The deposition of JAMES J. MORGAN
2 was resumed at 1:18 p.m.)

3
4 JAMES J. MORGAN,
5 having been previously duly sworn, testified
6 further as follows:

7
8 THE VIDEOGRAPHER: Back on the
9 record, 1:18 p.m.

10
11 EXAMINATION (CONTINUING)
12 BY MR. ADELMAN:

13 Q. Mr. Morgan, are you prepared to
14 continue with this deposition?

15 A. Yes, sir.

16 MR. ADELMAN: Mark this please as
17 the next exhibit.

18 (Plaintiffs' Deposition Exhibit 11
19 was marked for identification and is annexed
20 hereto.)

21 BY MR. ADELMAN:

22 Q. Could you review Exhibit 11,
23 please?

24 In here, sir, I direct your
25 attention specifically to Bates page 7931 and

0141
1 7934.

2 MR. HOWARD: 34?

3 MR. ADELMAN: Oh, and 33, I'm
4 sorry.

5 A. Okay.

6 Q. Have you reviewed this Exhibit 11?

7 A. I've looked -- yes, I've looked at
8 it.

9 Q. Have you seen it before?

10 A. I don't recall it. I think I may
11 have because in the last paragraph, that first
12 sentence, is that word L A C U N A E, lacunae;
13 please note that the blanks indicate lacunae.

14 I remember trying to figure out what
15 that word meant sometime in the past, so I may
16 have seen this.

17 Q. When did you see it?

18 A. It could have been in preparation
19 for deposition.

20 Q. Well, it's written on Philip Morris
21 letterhead on November 10, 1977; did you see it
22 on or about 1977?

23 A. I don't believe so, no.

24 Q. Again, this is a letter from
25 Mr. Holbert to Mr. Zoler regarding the incidence

0142
1 of smoking?

2 A. Yes.

3 Q. And in the third paragraph the memo
4 says that -- there are subparts to it, including
5 sub-part 2, a table of teen-age incidence data,
6 correct?

7 A. Yes.

8 Q. And then that table appears at Bates
9 marked 7934?

10 A. Yes.

11 Q. And yet here, again, the age
12 grouping for this compilation goes down to 12
13 years of age and runs up no more than 18.

14 A. On 34, that's correct.

15 Q. And that of course is the teenage
16 years, 12 to 18?

17 A. Yes, it is.

18 Q. Did you ever consider anything in
19 this memo in connection with the incidence of
20 teenage smoking in the course of making decisions
21 at Philip Morris?

22 A. No, I did not.

23 Q. Why -- go ahead.

24 A. I didn't.

25 Q. Why is it, if you know, that Messrs.

0143
1 Holbert, Zoler, Isaacs, Udow and Mazzitelli were
2 interested in teenage smoking data regarding the
3 smoking habits of children or kids from 12 to 18?

4 A. I don't know. They were all -- all
5 of those people I know were in marketing research
6 department. They are paid to know everything
7 that there is to know.

8 I'm also interested on 33, which you
9 referenced it, a list of all the studies that
10 this data came from, A through N, one, two --
11 like 12 studies, almost all of them are outside
12 studies; which goes back to my point that Philip
13 Morris did not regularly generate its own
14 information, but this is just a confirmation of
15 public information.

16 Q. Well, first of all, study G, that
17 was done by Roper for the Tobacco Institute?

18 A. Correct.

19 Q. Involving smoking of children 18 or
20 under a pack a week or more?

21 MR. HOWARD: Objection to form.

22 A. 18 plus I believe it is.

23 If you look up on C it says: Study
24 for Philip Morris 18 plus.

25 Q. No, I'm at G.
0144
1 A. I read that as plus.
2 Q. I see it as a minus, my copy may be
3 blurred.
4 A. I see marks above it. We're not
5 going to solve that --
6 MR. HOWARD: My copy looks like a
7 plus.
8 Q. I stand corrected.
9 Regardless of the source of the
10 information, it was -- again your market here is
11 collecting this information and putting it into
12 memos to be circulated, right?
13 A. Marketing research circulated within
14 its own department, yes.
15 Q. Where does it say it's circulated
16 within its own department?
17 A. Everybody who is on this memo --
18 Q. Why are they doing this all the
19 time, looking into teenage smoking, if it's not
20 utilized in marketing?
21 MR. HOWARD: Objection to form.
22 Q. Do you know; why is that happening?
23 A. Well your characterization of doing
24 it all the time I disagree with.
25 This department, to the best of my

0145
1 memory, would generate 150, 200 reports every
2 year on the cigarette marketplace, maybe more
3 than that, maybe 300. And we're looking at --
4 this is Exhibit 11, not all of which came out of
5 there.
6 We're still looking at an
7 infinitesimal small percentage. And this is a
8 group which is paid to know everything -- every
9 piece of information that exists on the business
10 in which they work for, and this is public
11 information. And for some reason they decided to
12 talk to themselves.
13 They didn't talk to the marketing
14 department, they talked to themselves. And they
15 say: We are often asked about the incidence of
16 smoking, I think they were educating themselves.
17 Q. I was going to ask you about that.
18 They were referring to other people
19 they work with, right?
20 A. I assume so.
21 Q. Including the marketing -- the
22 market people.
23 A. They worked with the marketing
24 people, yes.
25 Q. Right. To your knowledge, did

0146
1 Philip Morris ever determine the status of
2 Marlboro brand in the 17 and under age group
3 category?
4 A. Did it ever determine?
5 Q. Yes.
6 A. The status?
7 Q. Yes. How it was doing compared to
8 other brands in that age group.
9 A. Yes. I believe there was the one

10 Roper study I mentioned before that was done.
11 Q. When was that?
12 A. I believe it was done in 1974 and
13 1975. I don't remember, sometime in there.
14 Q. Were you aware of that when it was
15 done?
16 A. I do not recall being aware of it.
17 I am sure I read it after it was
18 done. I'm not so sure that I was aware of it
19 when it was being planned and done.
20 Q. As I recall your testimony, you
21 wouldn't have approved it if you had known about
22 it?
23 A. Sitting here today, I definitely
24 would not have approved it.
25 Q. Okay. Because, as you say, Philip

0147

1 Morris should not have an interest in the sale of
2 cigarettes to people under 18, correct?
3 A. It should not. It should not market
4 to people under 18. And in my belief Philip
5 Morris should take active steps and it is taking
6 active steps to prevent the sale of cigarettes to
7 people under age.
8 Q. And just so we understand, several
9 times you've mentioned what Philip Morris is
10 doing now. To be frank, that has been in the
11 last few years under your stewardship, correct?
12 A. What I've talked about that's
13 happened in the last several years; as what
14 Philip Morris did things before I was the steward
15 and before then to try and prevent its marketing
16 programs from having an impact on people under
17 18.

18 MR. ADELMAN: All right. Mark
19 this, please.

20 (Plaintiffs' Deposition Exhibit 12
21 was marked for identification and is annexed
22 hereto.)

23 BY MR. ADELMAN:

24 Q. This is Exhibit 12, Mr. Morgan, it's
25 a three page document. Will you read it, please?

0148

1 A. I do not have to read it, I've seen
2 it.

3 Q. You have?

4 A. Yes. I've seen it at length.

5 Q. When is the first time you saw
6 Exhibit 12?

7 A. Probably two years ago in
8 preparation for deposition. And then in the
9 Minnesota trial appearance as a witness there was
10 considerable time spent on this document.

11 MR. ADELMAN: For the record, this
12 is a Philip Morris memo of March 29, 1979
13 consisting of three pages.

14 Q. Correct?

15 A. That is correct.

16 Q. Do you know who wrote it?

17 A. I have no idea who wrote it.

18 Q. Did you write it?

19 A. I did not write it.

20 Q. The subject of this memo is

21 Marlboro, right?
22 A. Yes.
23 Q. What is the nature of this memo; in
24 other words, what purpose does it serve?
25 A. Well, my interpretation of a memo is

0149

1 that it is a briefing memo written by somebody
2 familiar with the brand, but it's written -- the
3 tone of it is written as a briefing memo for
4 somebody.
5 Q. Internal briefing memo?
6 A. Well, could be internal. It may be
7 for an advertising agency, giving them the
8 background on the brand; it could be for an event
9 marketing group.
10 It could -- I don't know. I don't
11 know who it was written for, but the general
12 structure and tone of it to me, as I said, was a
13 briefing memo.
14 Q. You've seen this a couple of years
15 ago; is that right?
16 A. Yes.
17 Q. You've thought a lot about it since
18 then?
19 A. I've been asked a lot about it since
20 then.
21 Q. Do you have any recollection of
22 reading it while you were working for Philip
23 Morris?
24 A. No, I do not.
25 Q. Who was the brand manager of

0150

1 Marlboro in 1979?
2 A. I am not certain, but it could have
3 been Mr. Robert Fitzmorris; it may or it may not
4 have been.
5 Q. Did he report to you?
6 A. No.
7 Q. Who reported to you?
8 A. In 19 --
9 Q. Withdrawn.
10 You were executive vice president?
11 A. Right, so brand manager of
12 marketing.
13 Q. Right. And the activities of the
14 brand manager, would be ultimately under you; is
15 that correct?
16 A. Yes.
17 Q. Now, where it says demographics you
18 see a sentence that states: Marlboro dominates
19 the 17 and under age category, capturing over 50
20 percent of this market.
21 Have I read that correctly?
22 A. No, you have not.
23 Q. Let me read it again.
24 Marlboro dominates in the 17 and
25 younger age category, capturing over 50 percent

0151

1 of this market.
2 A. You have not read it correctly.
3 Q. I thought I said 50.
4 A. You said "under" rather than
5 "younger."

6 Q. Okay. 17 and younger.
7 This sentence says, in plain
8 English, that Philip Morris determined that
9 Marlboro is being used by people in the 17 and
10 under age group, correct?
11 A. Yes, it does.
12 Q. It suggests, does it not, that
13 Marlboro is being sold to people in that age
14 category, correct?
15 A. Sold by retailers or given by older
16 brothers or sisters but, yes, it says that among
17 people 17 and younger.
18 Q. Where does it say in this memo that
19 the cigarettes sold -- Marlboro cigarettes sold
20 to people 17 and under were sold by retailers and
21 that Philip Morris has nothing to do with that
22 event; where does it say that?
23 A. It doesn't say it, but excuse me for
24 a minute. Philip Morris does not sell any
25 cigarettes directly to the consumer.

0152

1 There's a huge misunderstanding of
2 how this cigarette industry works. Philip Morris
3 actually sells all its cigarettes to distributors
4 or wholesalers who then sell to retailers, and
5 then the retailers sell to the consumer.
6 Philip Morris does not sell directly
7 to consumers.
8 Q. That's true of basically any food
9 product; isn't that true?
10 Hershey doesn't sell Hershey bars to
11 everybody; they send them out to stores?
12 A. Correct. Correct.
13 Q. You're not trying to say that Philip
14 Morris isn't responsible for the sale to minors
15 by its massive advertisement that you directed --
16 A. Oh, that's --
17 Q. -- excuse me, sir -- by its
18 marketing that you supervised, are you? Are
19 you?
20 A. I am saying -- what I am saying is
21 that what you're talking about a minor purchasing
22 cigarettes in defiance of a state law that Philip
23 Morris has nothing to do with it.
24 Q. Well, now, you are aware of the
25 marketing campaign called that marketing

0153

1 phenomenon as the Marlboro man?
2 A. I am very familiar.
3 Q. Why are you very familiar?
4 A. Because I've been involved with it
5 since 1963.
6 Q. And the Marlboro man has been
7 imminently successful in selling Marlboro
8 cigarettes, isn't that true?
9 A. I --
10 Q. Don't be modest.
11 A. I don't believe that the Marlboro
12 man is the single factor of being imminently
13 successful in selling Marlboro cigarettes; it's
14 been a contributing factor, for sure.
15 Q. Let's go one step further.
16 It's been a significant contributing

17 factor to the sale of Marlboro cigarettes since
18 1963 and before, correct?

19 A. No, not since before; Marlboro man
20 didn't start until 1963.

21 Q. It has been a significant
22 contributing factor to the sale of Marlboro
23 cigarettes from 1963 forward, right?

24 A. I believe that, yes.

25 Q. And the local grocery store doesn't
0154

1 make up the Marlboro man ads, Philip Morris does,
2 correct?

3 A. Absolutely, yes.

4 Q. And all of your other advertisements
5 for Marlboro was created, paid for, by Philip
6 Morris, correct?

7 A. Correct.

8 Q. And you maintain that Philip Morris
9 is not responsible for the sale of Marlboro
10 cigarettes to minors?

11 A. What I'm maintaining is that act of
12 purchasing cigarettes by minors at a retailer has
13 nothing to do with Philip Morris. I said the act
14 of purchasing cigarettes.

15 If the state law prohibits it is
16 Philip Morris guilty that a retailer and a
17 consumer are breaking the state law and the
18 states not enforcing it; is that Philip Morris'
19 fault?

20 Q. Well, who was it who wrote this
21 memo, do you know?

22 A. I do not know, I said that.

23 Q. Do you know generically; what role
24 this person played in the company?

25 A. I do not even know that, other than
0155

1 it's a briefing. And I've already said that I
2 think it's someone that's familiar with the
3 brand.

4 Q. Why is Philip Morris interested in
5 Exhibit 12, in the fact that Marlboro dominates
6 in the 17 and under age category; why is that of
7 interest to them?

8 A. I don't know. It's a statistical
9 fact.

10 Q. But what's the business significance
11 of that?

12 A. Well, I think most marketers look at
13 demographics as in terms of the power and
14 potential of a brand. And whether it be Hershey,
15 as you said, or any number of products, the way a
16 brand performs for many different age groups is
17 one of the measures that someone uses in
18 determining what the brands -- what it's about.

19 And generally speaking, in most
20 categories, most products, people believe that a
21 brand that has a younger profile is a stronger
22 brand than a brand that has an older profile.

23 Q. We're not talking about brands,
24 Hershey. We're talking about cigarettes.

25 You and I agree that cigarettes are
0156

1 harmful to younger people, correct?

2 A. No. I believe that younger people
3 should not smoke cigarettes.

4 Q. Why do you believe that younger
5 people should not smoke cigarettes?

6 A. Because the decision to smoke or not
7 to smoke is a decision about how much risk you
8 want to take in your life given the statistics
9 that tie cigarettes to certain forms of
10 disease -- and that that decision should be made
11 by mature people who have both sufficient
12 information to make an intelligent decision and a
13 mind process and an awareness of life and risks
14 and what you want to do and what you want to be
15 that I don't believe that minors have.

16 Q. What are the risks that you are
17 referring to?

18 A. The risk is that if you smoke there
19 is a statistical association between cigarette
20 smoking and several diseases.

21 Q. What are they?

22 A. Lung cancer, emphysema, coronary
23 heart disease are the three primaries.

24 Q. And there are others?

25 A. There are others.

0157

1 Q. Heart diseases.

2 A. I said coronary heart disease.

3 Q. All types of diseases are
4 statistically connected to smoking?

5 A. Right. And, therefore, if you
6 accept those statistics, which I do, there is a
7 risk in smoking.

8 Q. In young people. And here we're
9 talking about people 18 and under.

10 Young people are particularly, as
11 you had put it, unequipped to make a decision
12 about smoking?

13 A. Seventeen and under.

14 Q. Seventeen and under.

15 Are particularly unequipped for
16 making decisions about such risks; correct?

17 A. Well, I believe -- as a parent I
18 believe they are. But, more importantly, the
19 states of the United States have determined that
20 they are, and I believe that that's the law and
21 that's what should be followed; and my beliefs
22 are not inconsistent with that.

23 Q. I want to isolate out what your
24 beliefs are.

25 A. Okay.

0158

1 Q. Independent of what the states have
2 done, do I hear your testimony to be, you
3 personally, that people 17 and under do not have
4 the wherewithal to assess the risk of smoking?

5 A. I believe that a majority -- we
6 can't talk in absolutes, because you and I both
7 know that there are 16 year olds who think better
8 than some 25 and 45 year olds.

9 But, as a general statement, I
10 believe that people who are below the age of 18
11 should not -- should not be allowed to smoke
12 cigarettes.

13 Q. And part of that reason is --
14 besides their inability to make decisions on that
15 level, you would agree those people, 17 and
16 under, are more suggestible subject to people of
17 older years, correct?

18 MR. HOWARD: Objection to form.

19 MR. ADELMAN: He can answer.

20 MR. HOWARD: If you can.

21 A. In some ways yes and in some ways
22 no.

23 Q. In what ways yes?

24 A. Well, I think that people under --
25 17 or under are particularly subject to peer

0159

1 pressure and a great sense of wanting to belong
2 and be part of the crowd.

3 I think that's less true in later
4 years, although I know some people even at my
5 age, which is the mid 50s, who still I would
6 characterize as wanting to be part of the crowd
7 and subject to peer pressure.

8 Q. I'm not talking just about peer
9 pressure, I'm talking about pressures of all
10 sorts.

11 They are more susceptible, more
12 influenced, by all kinds of outside stimuli,
13 correct?

14 A. I'm not sure that's particularly
15 true. I believe, for example, that teenagers are
16 less susceptible to advertising than people in
17 their 20s personally.

18 Q. Has Philip Morris studied that?

19 A. I don't know that Philip Morris has
20 studied it, but I've been an advertising
21 executive, and it's a belief that I have.

22 Q. Should Philip Morris have been
23 studying whether teenagers are susceptible to
24 advertising of Philip Morris cigarettes?

25 A. No.

0160

1 Q. That's something that they shouldn't
2 have done?

3 A. No.

4 Q. Why not?

5 A. Because it didn't advertise to
6 teenagers and there would be no reason to do it,
7 and whatever conclusion you came from it would be
8 nonactionable anyway.

9 Q. Exhibit 12, as I've indicated,
10 says: Marlboro dominates in the 17 and under age
11 category, capturing over 50 percent of the
12 market.

13 Is there any statement in here, in
14 this three page memo, that says that we should
15 not be causing people 17 and under to smoke
16 Marlboros; there's nothing in here that says
17 that, is there?

18 A. No, there's nothing in here that
19 says that.

20 Q. Also, on page 2 of this exhibit,
21 talking about 1979 special programs, it says:
22 Resort coverage in existence for eight years.

23 It talks about promotions at various

24 places, spring and summer breaks, sales force and
25 so forth and so on; do you see that?

0161

1 A. Yes.

2 Q. By reasonable application you can
3 assume that this covers people under the age of
4 18 as well as those over, correct?

5 A. No.

6 Q. Okay. Likewise, summer sampling is
7 listed as an approach: 150 samplers are
8 dispatched to beaches, shopping centers, and
9 other markets of opportunity. This program
10 maintains a pressure on the marketplace.

11 What does "pressure on the
12 marketplace" mean?

13 A. Well, as I read it, it would mean
14 that you keep visibility of your product, that
15 you generate trial by sampling; and, that is, as
16 you want to keep your brand growing and present
17 in the market place, sampling is a technique one
18 uses.

19 Q. Have you ever become aware, during
20 your time at Philip Morris, of a notion in the
21 early '80s actually to raise the federal excise
22 tax on cigarettes?

23 A. A notion to raise it?

24 Q. Yes, proposal.

25 A. I'm hesitating because the federal

0162

1 excise tax on cigarettes is a subject I've lived
2 with for 20 years.

3 Q. Well you're a good man to ask then.
4 You're familiar with the subject?

5 A. I'm familiar with the federal excise
6 taxes. I can't -- your question about the early
7 1980s and the notion to raise it, I am not sure I
8 understand the question.

9 Q. Let me show you Exhibit 13 then.

10 A. Okay.

11 MR. HOWARD: You're making me
12 stretch further and further each time --

13 MR. ADELMAN: I'm sorry.

14 MR. HOWARD: -- for my exercise
15 for the day I guess.

16 (Plaintiffs' Deposition Exhibit 13
17 was marked for identification and is annexed
18 hereto.)

19 BY MR. ADELMAN:

20 Q. Would you read Exhibit 13?

21 A. This one is going to take me a
22 little time, I've never seen this before.

23 MR. HOWARD: Why don't we go off
24 camera and give you an opportunity to do that.

25 Off camera, please.

0163

1 THE VIDEOGRAPHER: Going off the
2 record, it's 1:41 p.m.

3 (Recess taken.)

4 THE WITNESS: Okay.

5 THE VIDEOGRAPHER: Back on the
6 record at 1:44 p.m.

7 BY MR. ADELMAN:

8 Q. Have you read Exhibit 13?

9 A. Yes, I've read it.
10 Q. It's a Philip Morris memo from
11 Mr. Johnston to Mr. Daniel, September 17, 1981,
12 subject: Teenage Smoking and the Federal Excise
13 Tax on Cigarettes, correct?
14 A. Yes.
15 Q. When is the first time you've seen
16 this document?
17 A. Today.
18 Q. Who is Mr. Harry Daniel?
19 A. Harry Daniel was in the Richmond
20 research and development department, as was Myron
21 Johnston. Myron Johnston may have worked for
22 Harry Daniel at that point in time.
23 Q. Did Philip Morris now, to your
24 knowledge, propose the idea to increase the
25 federal excise tax on cigarettes in 1981?

0164

1 A. I am not aware that there was a
2 proposal to increase it, but if there had been I
3 do not remember. If there had been I am quite
4 sure Philip Morris would have opposed it.
5 Q. The paper here that Mr. Johnston has
6 prepared is several pages, it's all part of
7 Exhibit Number 13.
8 On the third page, if you would,
9 sir, second paragraph, second sentence says as
10 follows: In my study, I found that the
11 cumulative smoking incidence among boys in 1976
12 was about the same as in 1979 up to the age 16,
13 but past the age of 16 (the age at which many of
14 them would have access to a car) the 1979
15 incidence of substantially below that of 1976.
16 Have I read that sentence
17 correctly?
18 A. Yes.
19 Q. What study, if you know, is he
20 referring to?
21 A. I do not know.
22 Q. Did you know that Mr. Johnston was
23 conducting studies of the smoking habits of
24 teenage boys?
25 A. I believe that in my review of

0165

1 Mr. Johnston's work I am not aware that he
2 conducted any studies. And he fairly regularly
3 reports like my data or my information or my
4 study; when you look into it, it really is public
5 information. Mr. Johnston accumulated public
6 information and then studied it.
7 And I think one needs to be careful
8 whenever Mr. Johnston uses the word my data, my
9 information and my study, at least that's my
10 experience in looking at his documents.
11 Q. But on the surface of it he says "in
12 my study," correct?
13 A. That is correct.
14 Q. Now --
15 A. Not necessarily he generated the
16 data, but he looked at existing data.
17 Q. Well, it doesn't say that; it says
18 "in my study."
19 A. Well, what does "my study" mean?

20 What's the --

21 Q. I don't want to argue with you; it
22 says "in my study."

23 A. If I had seven government documents
24 on the table and I brought them together, made
25 charts out of them, everything else, I would call
0166

1 that my study.

2 Q. All right. Now, the gist of this
3 material that he's put together suggests that,
4 with respect to teenage boys anyway, an increase
5 in price which might be caused by increase of
6 excise tax, would cause less of them to smoke or
7 would tend to smoke less cigarettes, correct?

8 A. I thought that when I first read it
9 and then I got very confused by this cross
10 elasticity section. This memo is beyond sort of
11 my economic understanding.

12 Q. You don't understand it?

13 A. I have trouble understanding exactly
14 what it's saying, yes -- but I accept your
15 opening statement, your opening position.

16 Q. Again, why is it, if you know, that
17 Messrs. Johnston, Daniel and Philip Morris
18 company were interested in the interaction
19 between teenage smoking and the federal excise
20 tax; do you have any knowledge of why that is?

21 A. Just generally that Mr. Johnston,
22 Mr. Daniel and this group in Richmond R&D, that
23 we keep seeing documents from, spent their time
24 studying the cigarette market demographics, the
25 impact of all different kinds of things, and that
0167

1 was their job.

2 The use that that was put to, I
3 don't know; except that I know none of their
4 stuff was used in marketing.

5 I would assume -- and I'm not
6 relating this memo, but the way that companies
7 work -- that this memo was written probably,
8 you're correct, in the face of some proposed
9 federal excise tax increase and someone said:
10 You better take a look at what that might do to
11 the marketplace.

12 Q. Including the teenage marketplace?

13 A. This particular memo looked at
14 teenage.

15 I was also struck by this statement,
16 the one sentence you read, that from 1976 to 1979
17 the incidence of teenage smoking was going down,
18 which is another thing we can both look in
19 correspondence that -- the incidence of smoking
20 among young people was going down in this country
21 until the early 1990s, when it became a political
22 issue and had high visibility, and all of a
23 sudden government data looks like teenage smoking
24 started to go up, but it had been going down and
25 down and down and down through this period.

0168

1 Q. You're saying that in the early '90s
2 that the political dialogue on teenage smoking
3 actually increased the amount of teenage
4 smoking?

5 A. That's my theory. My theory is that
6 cigarettes which had had much lower visibility
7 during the 1980s, and teenage smoking was going
8 down.

9 Q. So you're telling us that the people
10 who criticize now in the '90s teenage smoking are
11 themselves the cause of increases in teenage
12 smoking?

13 A. I would be willing -- I think that's
14 an interesting debate.

15 And I think there's, at least in my
16 mind, that the controversy -- surely, surely I'm
17 not suggesting that's what their motives were,
18 but the controversy around cigarettes and the
19 fact that it was one of the top three media
20 stories for years now has to whatever degree you
21 believe that young people like to take risk, that
22 the repositioning or the reawakening of awareness
23 of cigarettes as a risk and the focus that young
24 people shouldn't smoke and dah dah dah dah, I
25 think that young people today are -- some young

0169
1 people are smoking just out of defiance and I
2 think that that trend was -- this trend on
3 teenage smoking was going away, we know that's
4 true. And it's just fascinating to me that this
5 increase over the last several years is tied on a
6 time line to the politicalization of the smoking
7 issue.

8 Q. This morning you said, in response
9 to some of my questions about this, that you,
10 that is, Philip Morris, from '96 particularly
11 onward reacted favorably and agreed with the
12 critics, didn't you, that's why you put out the
13 statement --

14 A. I do agree that people shouldn't
15 smoke.

16 I'm just saying what caused young
17 people after years and years and years of
18 declining cigarette incidence among young people
19 what caused them to turn that around?

20 Q. And you're blaming that on the
21 people who are criticizing teenage smoking?

22 A. I'm not blaming it; I'm just making
23 the observations as you did when you show me
24 documents.

25 Don't blame me, I'm just making the
0170
1 observation that that turnaround, it seems to me,
2 is interesting that it coincides with the time
3 that cigarettes became a highly visible part of
4 the national agenda and youth smoking, in
5 particular, was the cornerstone of that. I think
6 that's a very interesting sort of subject to
7 consider.

8 Q. All right. Let's consider this:
9 During the same period in the 1990s did the
10 advertising campaigns of Philip Morris have
11 anything to do with the increase in teen
12 smoking?

13 A. They were no different from what
14 they were in the 1980s when teen smoking was
15 declining.

16 Q. What's the answer to my question?
17 A. What was your question? I'm sorry.
18 Q. I hope you listened.
19 A. I think I did, and I thought I
20 answered it. I'm sorry.

21 Q. My question was: In the 1990s did
22 the advertising of Philip Morris have anything to
23 do with the increase in teen smoking?

24 A. I don't believe so because I don't
25 believe that advertising has anything to do with

0171

1 the decision to smoke, it's peer pressure. And
2 studies show that advertising --

3 Q. Well then why do you advertise?

4 A. To get brand switchers from existing
5 smokers and to hold on to the smokers you have.

6 Q. It's your position that advertising
7 does not influence the decision of the teen
8 smoker?

9 A. That is my position. I believe
10 that -- not in an absolute sense. And I'm not
11 saying you can't find a person who said: I saw a
12 cigarette advertisement and I decided to smoke,
13 but I am saying that over years and years and
14 years, even the government data itself and the
15 surgeon general's reports, that it is quite clear
16 that peer pressure and family influence, family
17 smoking patterns, are the number one and two
18 determinants of the decision to smoke.

19 Q. If that is so, how do you explain
20 the fact that in your own report, Exhibit 12,
21 quote: Marlboro dominates in the 17 and younger
22 age category, capturing over 50 percent of the
23 market, that happened because Marlboro's
24 marketing caused that significant amount of
25 people 17 and younger to smoke Marlboro.

0172

1 A. Are you making that as an assertion?

2 Q. Yes. I'm asking you, isn't that
3 true?

4 A. No.

5 Q. Okay. Is there anything on --
6 withdrawn.

7 MR. ADELMAN: Make this
8 Exhibit 14.

9 (Plaintiffs' Deposition Exhibit 14
10 was marked for identification and is annexed
11 hereto.)

12 BY MR. ADELMAN:

13 Q. Could you read that, please?

14 A. Yes.

15 Q. Here my reference to you is the
16 first page of this document and Bates number
17 5178, please.

18 A. Okay.

19 Q. Have you seen Exhibit Number 14
20 before?

21 A. I do not ever remember seeing it.

22 Q. We can agree that it is a Philip
23 Morris memo from Mr. Johnston to Mr. Udow?

24 A. Yes.

25 Q. Mr. Udow is whom?

0173

1 A. Mr. Udow was in Philip Morris
2 marketing research based in New York.
3 Q. He worked under you?
4 A. Well, yes. Marketing research would
5 have been one of my functions; he did not report
6 to me.
7 Q. Now, this particular memo is
8 styled: Still More on Trends in Cigarette
9 Smoking Prevalence, correct?
10 A. Yes.
11 Q. Here he reviews some material,
12 public health information and Roper data, on
13 smoking trends, or he goes on to discuss it,
14 correct?
15 A. From 18 to 29 year olds, yes.
16 Q. 18 to 29 year olds.
17 And then at the bottom of the page,
18 after analyzing this material, he begins to
19 tell -- or he tells us here about a chart which
20 is attached to it as 5178, as follows: The third
21 chart shows the percent who used stimulants
22 (amphetamines) -- that's what he defined
23 stimulants to be -- or smoked marijuana or
24 cigarettes during the past month.
25 What I find intriguing is that the
0174
1 marijuana and stimulant use increased as
2 cigarette smoking declined, and that as marijuana
3 use began to decline, the rates of decline in
4 cigarette smoking slowed, and that stimulant use
5 is virtually a mirror image of cigarette usage.
6 It almost looks as though stimulants and
7 cigarettes are interchangeable to these kids (a
8 notion that has some intuitive validity). If so,
9 and if stimulant use continues to decline, we
10 should be able to expect smoking prevalence to
11 continue to increase.
12 Have I read all that correctly?
13 A. Yes, you have.
14 Q. So he's talking about data -- in
15 terms of the interrelation between smoking and
16 stimulants, which is methamphetamines and
17 marijuana, correct?
18 A. Yes.
19 Q. And I would point out to you that
20 the chart, number 5178, talks about interviews of
21 high school seniors.
22 A. From public health service, yes.
23 Q. Right. Some of whom -- well it says
24 the overwhelming majority which will have
25 recently turned 18, right?
0175
1 A. Correct.
2 Q. But it's necessarily then exploring
3 their experience before 18?
4 A. Yes, the public health services did
5 that.
6 Q. Yes, public health service.
7 And all of this is collected in this
8 report to Mr. Johnston talking about the
9 interrelationship between the use of two illegal
10 drugs, marijuana and amphetamines, if you will,
11 correct?

12 A. That is correct.
13 MR. ADELMAN: We have to go off
14 the tape -- off the record, excuse me.
15 THE VIDEOGRAPHER: Going off the
16 record, it's 1:57 p.m.
17 (Recess taken.)
18 THE VIDEOGRAPHER: Back on the
19 record, 1:58 p.m.
20 MR. ADELMAN: Could you read back
21 the last question, please.
22 (The pending question was read.)
23 BY MR. ADELMAN:
24 Q. Do you know why it is that Philip
25 Morris is interested in the phenomenon reported
0176
1 here in this analysis, the interrelationship, the
2 conversant relationship between the use of those
3 drugs and smoking?
4 A. I do not know specifically with
5 regard to this memo, but I must say I'm somewhat
6 baffled by this continuing assertion; not from
7 you personally, arguing --
8 Q. Just answer my question.
9 A. Yes, I will.
10 Q. You can give speeches on other
11 occasions --
12 A. Okay.
13 Q. -- I don't mean to be impolite to
14 you, but answer my question.
15 A. I assume that Philip Morris was
16 interested in it because the government was
17 interested in it, and the government issued a
18 report. And I believe the company has a right to
19 look at reports and data that the government is
20 issuing in and around the subject of its
21 business.
22 Q. Did you know about this concern or
23 consideration by Philip Morris personnel about
24 the interrelationship between smoking and the use
25 of marijuana or methamphetamine and the
0177
1 conversant use of that too?
2 MR. HOWARD: Objection to form.
3 Q. Did you know about it?
4 A. No.
5 Q. I take it from your response here a
6 moment ago you were disturbed about that?
7 A. No. I'm disturbed over the last two
8 years of people showing me memos --
9 Q. I'm not --
10 A. -- that report government data and
11 suggesting there's something wrong with Philip
12 Morris looking at public information and
13 reporting on it, that's all.
14 Q. I'm not here to question you over
15 the last two years, and this deposition will be
16 much longer if you want to proceed and discuss
17 all of the things that were discussed before.
18 I have focused question I'm going to
19 ask, and I think you would be well advised to
20 answer them.
21 A. Okay.
22 Q. There are other forms for you to

23 speak, and it's not in this deposition. You can
24 go out and speak publicly all you will, but I
25 just want to ask my questions.

0178

1 A. Okay.

2 MR. HOWARD: Counsel, and he's
3 been doing a good job of answering your
4 questions, many of which are repetitive of what
5 has been in five or six prior depositions, and
6 Mr. Morgan is giving you a complete record in
7 answering them, he's entitled to do so.

8 MR. ADELMAN: With all due
9 respect, the documents I'm showing him largely he
10 hasn't seen before, and this is one example; and
11 my focus is on these documents.

12 I'm well advised of your point. I
13 don't want to tread on grounds that's been gone
14 over. But the witness here, in a moment of peak,
15 said he wants to speak whatever, but that's not
16 the purpose of this proceeding.

17 As long as we each understand each
18 other I think we'll be fine.

19 MR. HOWARD: We do, and we'll
20 proceed that way.

21 MR. ADELMAN: Thank you.

22 May I have this marked please as the
23 next exhibit.

24 (Plaintiffs' Deposition Exhibit 15
25 was marked for identification and is annexed

0179

1 hereto.)

2 BY MR. ADELMAN:

3 Q. If you will, sir, my focus is on the
4 first page, and then the first chart that is not
5 marked and the second chart.

6 A. So the last two charts. This one?
7 Okay.

8 Q. Have you seen this document before?

9 A. Not that I remember.

10 Q. Again, who was Hyron Johnston in the
11 office?

12 A. Myron.

13 Q. Myron.

14 A. That's our friend that we've been
15 talking about mostly, Mr. Johnston.

16 Q. And once again, as you would point
17 out, this is public health service data?

18 A. Right.

19 Q. And again, the subject is the ages
20 at which people start smoking?

21 A. Yes.

22 Q. Do you know why it is of interest to
23 Philip Morris to determine the ages at which
24 people start smoking?

25 A. Yes.

0180

1 Q. What is that?

2 A. Because conventional wisdom from a
3 marketing standpoint said that you should focus
4 particularly on the 18 to 24 year age group; and
5 if it turned out that the majority of people
6 started smoking at 25 to 34 you may want to
7 market more against that group than less than the

8 18 to 24s.
9 Q. Well, the thesis of course that you
10 announce as logical extension which is that when
11 younger people start to smoke the more likely it
12 is they will continue to smoke, correct?
13 A. I think we agreed on that earlier.
14 Q. All right. Look at the chart, first
15 attachment to this exhibit styled: Cumulative
16 Smoking Incidence by Current age White Males.
17 A. Uh-huh.
18 Q. Now, you'll notice there's a chart
19 set up with percents as against attained age.
20 A. Yes.
21 Q. All right. The attained age begins
22 at 13.
23 A. Yes.
24 Q. Now understanding, of course, that
25 you would say that this is public health service
0181 data, why is it that it is of interest or was of
2 interest to Philip Morris to track the smoking
3 patterns of people between 13 and 18?
4 A. It had no marketing use. I assume
5 the use was because the government was reporting
6 it and it could have provided a continuum to a
7 graph. The memo is actually kind of interesting
8 too.
9 Q. What is the Marlboro franchise, if
10 you know?
11 A. Marlboro franchise is -- it depends
12 what period of time you're talking. Right now --
13 Q. Let me interject, 1974.
14 A. 1974, the Marlboro franchise would
15 have been males 18 to 24.
16 Q. Maybe I should even ask a more
17 fundamental question. What does "franchise" mean
18 in marketing of cigarettes; what is that phrase?
19 A. It means the same as in any -- it's
20 sort of your core -- what's the core group on
21 which the brand is based.
22 MR. ADELMAN: Okay. Let me have
23 the court reporter mark this as the next exhibit.
24 (Plaintiffs' Deposition Exhibit 16
25 was marked for identification and is annexed
0182 hereto.)
2 BY MR. ADELMAN:
3 Q. I presented you Exhibit 16.
4 Would you review it, please, with
5 particular reference to pages 0694 and 0698.
6 MR. HOWARD: Give him an
7 opportunity to review it.
8 MR. ADELMAN: Sure.
9 MR. ADELMAN: And I would add 0693
10 too.
11 A. So 93, 94 and 98?
12 MR. ADELMAN: That's correct, but
13 read it all.
14 THE WITNESS: Okay. Let's take a
15 shot at it.
16 BY MR. ADELMAN:
17 Q. I want you to be satisfied with it.
18 A. I'm satisfied.

19 Q. All right. First of all, what is
20 this document?
21 A. This is a report from July 1974. It
22 is a report from the marketing research
23 department and it is a summary of a report that
24 was requested or executed by the Roper
25 organization.

0183

1 Q. When is the first time you've seen
2 this?
3 A. I'm going to guess I saw it in 1974,
4 I don't remember that. I certainly have seen it
5 in preparation for depositions.
6 Q. Why do you believe you saw it in
7 1974?
8 A. I believe because this would be the
9 kind of report I would have seen in my
10 responsibility at that time.
11 Q. Okay. Did you initiate the study?
12 A. I do not believe I did, no.
13 Q. Did anybody you interacted with
14 direct you to initiate the study?
15 A. Not that I recall. I may have been
16 involved in discussions on it.
17 I would not have -- 1974, my
18 position wouldn't have put me in a position to
19 approve it or disapprove it.
20 Q. From your perspective now can you
21 tell us who might have initiated this study?
22 A. I assume it was either Mr. Zoler or
23 Mr. Fountaine, as head of the marketing research
24 department; and they would have reported to
25 Mr. Landrey at that time.

0184

1 Q. To Mr.
2 A. Landrey, L A N D R E Y.
3 Q. Who in turn reported to you?
4 A. No. I always worked for
5 Mr. Landrey.
6 Q. You worked with him?
7 A. Under him. I reported to him.
8 Q. You're all in the same group.
9 A. Right.
10 Q. As you point out, page 0693 tells us
11 this research is done by the Roper organization.
12 A. Yes.
13 Q. Most particularly, and I'm reading
14 it correctly I hope, the Roper organization was
15 commissioned to undertake the study summarized
16 here, with the intention of probing the dynamics
17 of the market among smokers below the age of 24.
18 (This was not the "usual" sample of age 18 to 24;
19 in this study, no lower age limit was set.)
20 A. Correct.
21 Q. Who determined that this study would
22 not cover just 18 to 24 but would go lower?
23 A. I do not know.
24 Q. Do you know why the lower age, that
25 is to say, the teenage group of people, was

0185

1 covered by this study?
2 A. I believe if you -- from reading the
3 report, that what this was looking at was a

4 concern that the menthol category, which Marlboro
5 did not participate in, the menthol category was
6 becoming more popular among smokers 18 to 24
7 and -- as I have said about this report many
8 times, this is the report that I said I'm truly
9 embarrassed by -- that it was decided to take a
10 peek at what was happening in menthol brands
11 below 18.

12 Q. Why now are you saying you're
13 embarrassed by this report, this Exhibit 16?

14 A. Because this report says this was
15 not the unusual sample of 18 to 24 in this study,
16 among lower age limits.

17 This is a clear -- this is a clear
18 example of where -- what I consider to be a
19 policy of not researching -- initiating Philip
20 Morris sponsored research below the age of 18 was
21 not followed and, from this memo, it was not
22 followed quite consciously.

23 Q. Who would have approved -- had to
24 have approved this study to be done?

25 A. I would guess that the head of

0186
1 market research certainly would have had to
2 approve it.

3 Q. Who is that?

4 A. As I said, either Mr. Zoler or
5 Fountaine, I forget. Mr. Fountaine preceded
6 Mr. Zoler, and I'm not sure who was running the
7 shop then. And it would have had to have been
8 approved farther up the line; how far up the
9 line, I don't know.

10 Q. Well let's start this way: Would it
11 have had to have been approved by you?

12 A. No, because I don't -- I was not in
13 that line.

14 Q. Who was in the line farther up,
15 Mr. Zoler and Mr. Fountaine?

16 A. No. Either Mr. Zoler or
17 Mr. Fountaine, they didn't serve together, one
18 replaced the other; so if I knew when Mr. Zoler
19 started his job, I could tell you if it was
20 Mr. Fountaine or Mr. Zoler. They are the
21 director of market and research --

22 Q. Anybody above them?

23 A. Anybody above them; and I just don't
24 know how far up.

25 Actually I don't know that someone

0187
1 above them did approve it; maybe they took it
2 upon themselves to do it.

3 Q. If you will, and bear with me, this
4 is page 0694 just at the top, describing the
5 survey again: Young smokers were sought out in
6 35 locations around the country at popular
7 "hang-outs", at drive-ins, bowling alleys, near
8 military bases, at beaches, et cetera. The
9 resulting 1050 interviews provided data that
10 match the more carefully controlled sampling
11 procedures of the National Tracking Study.
12 Okay.

13 Again, I take it this bothers you
14 because it would poll within it people under 18.

15 A. Yes. I wish it hadn't been done.
16 Q. My question now is the last sentence
17 says that: The resulting 1050 interviews
18 provided data that match the more carefully
19 controlled sampling procedures of the National
20 Tracking Study.

21 Is the National Tracking Study
22 conducted by Philip Morris?

23 A. Yes. Well, it's funded by Philip
24 Morris, an outside contractor actually makes the
25 calls. Philip Morris people don't make the

0188
1 calls, but you would call it I suppose a Philip
2 Morris study I guess.

3 Q. Okay. Then on page 698 please, in
4 the middle of the page there's a reference to
5 menthols in drawing larger shares in younger
6 groups and so forth.

7 A. Yes.

8 Q. There again on the chart there's a
9 reference to age 18; how many people age 18 and
10 under, correct, under 18?

11 A. Through 18.

12 Q. Yes. Under 18?

13 A. No.

14 Q. 18 and under?

15 A. I'd say 18 and under because see the
16 next line is 19 to 21.

17 Q. Right, we agree.

18 A. And you're right. It's actually
19 mislabeled.

20 Q. I didn't say it was mislabeled, I
21 said it's to 18, period, right?

22 A. I'm saying I think it's through 18.

23 Q. It doesn't say that, does it?

24 A. It does not say that; otherwise
25 we're missing 18 year olds on the chart.

0189
1 Q. Did you ever, during your service at
2 Philip Morris, hear about this study that's
3 reflected in Exhibit 16?

4 A. I said -- while I don't remember
5 literally reading it, I would be very surprised
6 if I had not read it at the time it was
7 published. This would be the kind of study that
8 I would read.

9 Q. Well, on that predicate then would
10 you reject it as going under 18 years of age in
11 its research?

12 A. No, because in 1974 I am not sure
13 that I understood how I'd feel about this study
14 sitting here today.

15 I would have assumed someone made
16 the decision that it was okay to do. And I am
17 just not sure I would have had -- I mean I had
18 been with the company ten years at that point, I
19 was 32 years old.

20 I'm not sure I would have had at
21 that point the wisdom to see this and go: Oh, my
22 gosh, why did they do this, this thing -- this is
23 ridiculous, we shouldn't be talking to those
24 people. I just wasn't in a position in the
25 organization to even think like that at that

0190

1 point.

2 Q. But you were in a position in the
3 organization to stop it at that time?

4 A. No, I was not.

5 Q. If you would have said no they
6 wouldn't have done it?

7 And are you saying that in 1974, if
8 this came to your attention, accepting your
9 predicate for a moment, you would have approved
10 this or would not have objected to it; is that a
11 fair summary of what you just said?

12 A. I think I would not have been
13 sensitive enough of this, the implications of
14 this study --

15 Q. As you are now?

16 A. As I am now, yes.

17 And then, therefore, the answer to
18 your question is I think there is -- if I had
19 been in a position to approve it that's the
20 hypothetical in it, I wasn't; if I was I think
21 there's some chance that I would have approved
22 it.

23 And I don't -- I'm embarrassed to
24 say that too. Not only am I embarrassed about
25 the poll, I'm embarrassed to say that my mind-set

0191

1 at that point might not have understood the
2 implications of that.

3 Q. Why are you embarrassed to say that?

4 A. Because I wish I had been -- I wish
5 at age 32 I had been -- had the wisdom to look at
6 it if I had been in the position to say no, no,
7 no, no, I don't care, I don't care, we're just
8 not going to do that.

9 MR. ADELMAN: Let me show you
10 Exhibit 17, please.

11 (Plaintiffs' Deposition Exhibit 17
12 was marked for identification and is annexed
13 hereto.)

14 BY MR. ADELMAN:

15 Q. Exhibit 17 is two pages. Can you
16 read it to the best of your ability.

17 MR. HOWARD: I'd ask counsel do
18 you have a more complete copy, because the second
19 page of this document says "over" and there's no
20 further page to go over to.

21 MR. ADELMAN: Frankly, counsel, I
22 don't. I have only what I've been provided
23 with. And I'll tell you, I simply want to ask
24 the witness to identify this and find out what he
25 knows about it.

0192

1 A. Okay. I've looked at it.

2 Q. Can you identify Exhibit 17?

3 A. I see that it was -- it looks -- at
4 the very bottom, in this hard to read type on the
5 front page says: Complete summary available from
6 National Automatic Merchandising Association, 7
7 South Deerborn Street, Chicago, Illinois.

8 This looks, to me, like it is a
9 Gilbert Youth Research Study sponsored by the
10 National Automatic Merchandising Association,

11 which is the vending machine industry.
12 Q. Correct. Now, have you ever seen
13 this in your work?
14 A. I saw this for the first time during
15 the Minnesota deposition. Which was in 1990 --
16 Q. Seven.
17 A. Seven.
18 Q. Now, this, I hope then and is now,
19 going to be identified to you as coming from the
20 files of Philip Morris.
21 Accepting that predicate, do you
22 know why it is that Philip Morris had this
23 information in its files from Gilbert Youth
24 Research Study on teenage smoking?
25 A. I don't. I believe it predated my

0193

1 employment at Philip Morris --
2 Q. I believe it has the date of --
3 A. I was looking for one, I couldn't
4 find one.
5 MR. HOWARD: It says 1963 on
6 page 2.
7 MR. ADELMAN: Thank you,
8 counselor, it does.
9 Q. It says: The Gilbert Study of
10 teenage cigarette purchasing and smoking habits
11 was conducted in 1963.
12 A. I joined in midyear 1963. I do not
13 recall this document.
14 Q. My question is a little different.
15 A. I'm sorry.
16 Q. Do you know why it is we would find
17 this in the Philip Morris files?
18 A. I assume for the same reason you
19 would find public health service studies in the
20 Philip Morris files, which is a study on the
21 cigarette industry.
22 Q. Well, this also shows a pattern of
23 teenage smoking, doesn't it?
24 A. It does; but it's a study on the
25 cigarette industry.

0194

1 MR. HOWARD: Off the record,
2 please.
3 THE VIDEOGRAPHER: Going off the
4 record, 2:19 p.m.
5 (Recess taken.)
6 THE VIDEOGRAPHER: Back on the
7 record, 2:29 p.m.
8 MR. ADELMAN: Are we ready to
9 proceed counsel?
10 MR. HOWARD: Yes.
11 MR. ADELMAN: Okay.
12 BY MR. ADELMAN:

13 Q. Mr. Morgan, let me ask you, during
14 the period when you were serving as assistant
15 director of brand management and director of
16 brand management and assistant director for
17 marketing in particular, and then on when you
18 were a board member and executive vice president;
19 in other words, '72 to '83, did you know that the
20 people at Philip Morris were doing studies
21 regarding the smoking habits of 15 to 19

22 year-olds?
23 MR. HOWARD: Objection to form.
24 No foundation.
25 MR. ADELMAN: We'll find out.
0195
1 Q. Did you know that?
2 A. First, I was not a board member,
3 which is not important.
4 Q. I'll rephrase the question.
5 From the period of 1969 to 1983 did
6 you know the people at Philip Morris were doing,
7 among other things, studies into the smoking
8 habits of people 15 to 19 years old?
9 MR. HOWARD: Objection.
10 You may answer.
11 A. I would say I was generally unaware
12 of that. And I'm interpreting your question as
13 Philip Morris initiating studies of that group.
14 I would be aware that the market
15 research department in Richmond were reporting
16 out on publicly available information.
17 MR. ADELMAN: All right. Let me
18 show you this as the next exhibit.
19 (Plaintiffs' Deposition Exhibit 18
20 was marked for identification and is annexed
21 hereto.)
22 BY MR. ADELMAN:
23 Q. Could you review Exhibit 18, please?
24 A. Okay.
25 Q. Have you ever seen this memorandum
0196
1 before?
2 A. I was copied on it, so I will assume
3 I have seen it, yes.
4 MR. ADELMAN: For the record, it's
5 a memorandum from Mr. Johnston to Mr. Seligman
6 dated May 21, 1975.
7 Q. As you point out, you're copied on
8 it on page 6. Now, have you reviewed this?
9 A. Yes.
10 Q. Did you see it on or about May 21st,
11 1975 or sometime thereafter?
12 A. I don't remember it specifically,
13 but I certainly --
14 Q. But you saw it?
15 A. I was copied on it, so I assume I
16 saw it and I assume I read it.
17 Q. Yes. On that predicate let me ask
18 you these questions based on that.
19 You note here reference to
20 Mr. Johnston discussing again research regarding
21 Marlboro market penetration among 15 to 17 years
22 old, that's at the bottom of the first page; do
23 you see that?
24 A. No.
25 Q. Fourth line from the bottom.
0197
1 A. Under demographics it says --
2 Q. Yes, sir.
3 A. Where most of our studies have been
4 restricted to people age 18 and over, but my own
5 data, which includes younger teenagers, shows
6 even higher Marlboro penetration among 15 to 17

7 year-olds.
8 Q. Right.
9 A. Yes, I see that.
10 Q. Did you ever say to Mr. Johnston
11 don't do such research?
12 A. No. Mr. Johnston and I had nothing
13 to do with each other --
14 Q. So the answer is you didn't?
15 A. No, I didn't.
16 Q. On the next page, page 2 of this
17 document, Exhibit 18, there are some more
18 conclusions.
19 Here I'll just focus, as he puts
20 it: It seemed reasonable to believe, therefore,
21 that there should be a relationship between the
22 number of 15 to 19 years olds and Marlboro sales
23 during the period of Marlboro's rapid growth.
24 And then in the subparagraphs, or
25 actually seven of them, he talked about
0198
1 correlation between Marlboro sales and 15 to 19
2 year-olds; is that correct?
3 A. Yes.
4 Q. Again, did you go to Mr. Johnston
5 and say: Don't do any analysis based on people
6 18, under 18?
7 A. No, I did not.
8 Q. Do you think he should have been
9 doing this research --
10 A. Well --
11 Q. Let me finish my question.
12 A. Sorry.
13 Q. -- with respect to the -- here, the
14 age group of under 18 -- 15, 16, 17, and the
15 correlation between Marlboro sales and that age
16 group?
17 A. I don't see a problem with that if
18 it was public information, which this was.
19 It is sort of like saying to a law
20 firm: Can you have a library of legal decisions
21 so that you have nothing to do with; the answer
22 is, yes, you do. And what Mr. Johnston is doing
23 is reporting on information the government or
24 someone else generated, and in a business I think
25 you, in this issue, can draw a line between
0199
1 Philip Morris looking at, analyzing and reporting
2 out publicly available information generated by
3 another party; and I believe there's a difference
4 between that and going out and conducting your
5 own research among people who are below legal
6 age. I just think there's a difference there,
7 and I think that answers the question.
8 Q. No, that doesn't at all.
9 The thrust of the memo is not where
10 the data comes from, but what it's being used
11 for. It's being used to predicate Marlboro
12 sales.
13 And the implicit premise at page 2
14 here, is it not, is that Marlboros are being sold
15 and consumed by people under 18?
16 MR. HOWARD: Objection to the term
17 "predicate Marlboro sales."

18 Do you understand?
19 Q. Do you understand the question?
20 A. I believe what you're saying is that
21 on page 2 the data independent of it's source --
22 Q. Right.
23 A. -- is being used to project sales
24 trends for Marlboro.
25 Q. No.

0200

1 A. I'm sorry.
2 Q. It's being used to correlate
3 Marlboro sales and the age group in this case, 15
4 to 19, which of course includes teenagers 15, 16
5 and 17; and the premise that anybody reading this
6 would see is that it's assuming that people 15,
7 16 and 17 are smoking Marlboros?
8 A. I don't think there's any secret
9 about that.
10 Q. You knew that?
11 A. We've looked at all kinds of data
12 that said that Marlboro had a high share among
13 those people who decided to smoke under 18. I'm
14 not meaning to suggest that I didn't know that.
15 Q. Okay.
16 A. But what I am saying is that I
17 didn't do anything about it being in control of
18 marketing.
19 Q. That's my question. Why didn't you
20 take any action to stop the penetration or the
21 sales, if you will, to the market of people 18
22 and under?
23 A. Because what is it exactly that one
24 would do? I don't know the answer to that.
25 Would you stop marketing to 18 to 24

0201

1 year-olds because of it?
2 Q. Here's the point I want to get to.
3 Why didn't you do in 1973, '74
4 and '75 and the '80s what you started to do in
5 1996; do you have an answer for that?
6 A. Yes, I believe we did.
7 The sampling age for Philip Morris
8 sampling was 21, not 18. On some promotions we
9 put in a participation age that was older. We
10 put in buffer zones between 18 and 21 on the
11 number of activities. We raised the profile, age
12 profile, of our media buys. We did a whole
13 number of things that were within our control.
14 I would ask in turn -- not of you,
15 but since this is government data and was equally
16 known by the government, why didn't the
17 government crack down on the state laws that said
18 it was illegal for people under 18 to buy
19 cigarettes?
20 Q. The question is, if you can answer
21 it, what action, if any, did you take in reading
22 such memos as Exhibit 18 then and there to reduce
23 or to stop the sale of Marlboro cigarettes to
24 people under 18?
25 A. I will tell you this that, as I

0202

1 remember it, being involved in Marlboro at that
2 time, all through the '70s and until I left in

3 '83, we constantly lived with the fact that we
4 had to be responsible in terms of our marketing
5 programs and make sure that we did nothing that
6 would encourage the purchase of cigarettes by
7 people under 18. And there were a whole bunch of
8 big actions and little actions that were taken
9 that made sure that we marketed legally.

10 We had the Federal Trade Commission
11 watching us. We have antismoking groups like
12 GASP and ASH that would look at everything we did
13 and would scream bloody murder if they thought
14 that we were doing something.

15 We acted really responsibly and did
16 a whole variety -- nothing as formulated,
17 organized and huge as what we talked about
18 before, Action Against Access, but we did a whole
19 bunch of things within the market to make sure
20 that we did not market to people below 18.

21 Q. Did you publicly disclose in the
22 1970s the information that's contained in these
23 documents that I've shown you that clearly show
24 your company -- not you individually, but your
25 company collectively was aware that its products

0203
1 were being sold to people under 18; did you share
2 that with the public?

3 A. Well, that they were being smoked by
4 people under 18 --

5 Q. Right.

6 A. -- not necessarily sold. This is
7 not necessarily sold. There's a semantic
8 difference.

9 Q. Did you make public this
10 information?

11 A. I don't believe so. The government
12 did, I didn't have to.

13 Q. They didn't have your information,
14 did they? This wasn't --

15 A. This is all government data.

16 Q. No, sir. The correlation between
17 Marlboro sales and so forth.

18 I showed you a document a minute
19 ago, your own internal document, which showed
20 that Marlboro had the deepest penetration in the
21 teenage smoking market; did you make that known,
22 you the company?

23 A. I don't believe so.

24 I believe, if you look at security
25 analyst reports, that they would always comment

0204
1 on Marlboro's strength among younger smoking
2 ages. I don't think it's a secret.

3 MR. ADELMAN: Again, let me have
4 this marked, please, as Exhibit 19.

5 (Plaintiffs' Deposition Exhibit 19
6 was marked for identification and is annexed
7 hereto.)

8 MR. HOWARD: Counsel, may I make a
9 suggestion, and we might not just be as familiar
10 with these documents, but you might want to mark
11 this as Exhibit A to another exhibit you've
12 already marked.

13 MR. ADELMAN: Off the record here.

14 MR. HOWARD: Off the record.
15 THE VIDEOGRAPHER: Off the video
16 record?
17 Going off the record, it's 2:41 p.m.
18 (Discussion off the record.)
19 THE VIDEOGRAPHER: Back on the
20 record, 2:43 p.m.
21 BY MR. ADELMAN:
22 Q. All right. Sir, I've handed you
23 Exhibit 19; have you reviewed it?
24 A. Yes.
25 Q. We can agree that it was part and is

0205

1 indeed the cover page of Exhibit 6?
2 A. I believe that to be true.
3 Q. Showing you now what is Exhibit 19,
4 did you receive Exhibit 6 as well as
5 Exhibit 19 --
6 A. Yes.
7 Q. -- on or about May 18, 1973,
8 correct?
9 A. Yes.
10 Q. And did you read it then to your
11 recollection?
12 A. I think I probably did. To my
13 recollection, no; but I certainly would agree
14 that it was received.
15 Q. And again, it shows someone
16 reporting on a study about smoking, in this case,
17 by people in the age group 12 to 17?
18 A. Correct, opinion research conducted.
19 MR. ADELMAN: All right. Thank
20 you. Let's have this marked as Exhibit 20.
21 (Plaintiffs' Deposition Exhibit 20
22 was marked for identification and is annexed
23 hereto.)

24 BY MR. ADELMAN:

25 Q. In here, sir, I direct your

0206

1 attention particularly to pages 4090, 4094 and
2 4095.
3 A. 90, 94 and 95.
4 Q. As well as 4089, 4090, 4094 and
5 4095.
6 A. I'm very familiar with this
7 document.
8 Q. All right. When is the first time
9 you saw it?
10 A. I assume June 2nd, 1976, the date of
11 it, because it was addressed to me; so it was
12 either that day or the next day.
13 Q. Is any of the writing or the
14 printing on the next page yours?
15 A. No, it's not.
16 Q. Do you know who wrote that?
17 A. I do not know, but given -- can we
18 agree that it looks like the scratched out answer
19 R.D. Seligman and R.M. Thomson --
20 Q. Yes.
21 A. -- TP & I got the information from
22 Al Udow for this report. H.D., it looks like
23 Harry Daniel, who we mentioned before I would
24 guess.

25 Let's see, was he copied on it?
0207
1 Does it show a copy?
2 Q. Yes.
3 A. And there's a check mark next to his
4 name, so I guess that would be Harry Daniel.
5 Q. Did you ask Mr. Morgan to report to
6 you on this information, why people start to
7 smoke?
8 MR. HOWARD: Mr. Udow you mean?
9 MR. ADELMAN: Yes, Mr. Udow.
10 Q. Did you ask him to report to you on
11 this?
12 A. Yes, I did.
13 Q. Why?
14 A. As it says in the first paragraph,
15 Mr. Goldsmith, who was the president of the
16 company, asked me what we knew -- what was known
17 about why people start to smoke.
18 Q. What, if you know, is his reason in
19 seeking out that information?
20 A. Mr. Goldsmith is a very interesting
21 man who I'm very fond of.
22 Mr. Goldsmith was not only a great
23 businessman, but he was also quite intellectual
24 and really enjoyed getting into discussions about
25 cigarette smoking.

0208
1 And he -- more than most people at
2 Philip Morris, as I remember -- always wanted to
3 make sure we understood what the -- why people
4 smoked, the good things that cigarettes did for
5 people, in the face of all of the allegations of
6 the risks involved. And he was inclined to get
7 into these kind of subjects, and he asked me what
8 we knew about why people started to smoke.
9 Q. Did he have a specific reason; for
10 instance, did he want it for a speech, written
11 report, some testimony?
12 A. No, that wasn't the way
13 Mr. Goldsmith operated. I think Mr. Goldsmith
14 probably just was curious on the subject. And I
15 don't believe -- as I remember, it didn't even
16 relate to a business reason or a business
17 situation.
18 Q. Did you pass this memo on or did
19 Mr. Udow pass it on to Mr. Goldsmith?
20 A. The memo that we're looking at?
21 Q. Right.
22 A. Was he copied on it?
23 Q. No.
24 A. The way we operated, I probably
25 would have passed it on if Mr. Goldsmith had

0209
1 asked me the question.
2 Dr. Udow would have written back to
3 me and I would have passed it on to
4 Mr. Goldsmith.
5 Q. So what you're saying is he became
6 aware of this memo and its contents?
7 A. I have every reason to believe,
8 although I don't have a memo that shows that I
9 passed it on. I don't know. I would not have

10 sat with this memo if he had asked me the
11 question.

12 Q. So the answer to my question is yes
13 he knew about this memo and its contents?

14 A. My answer is to the best of my
15 understanding he would know about it.

16 Q. Okay. Let me go over some things
17 with you here. First page, that is 4089, in the
18 middle of the page, again this is a report by
19 Mr. Udow of some study done in Oregon Medical
20 School about, among other things: As mentioned
21 above, most smokers appear to have begun smoking
22 between the ages of ten and 18.

23 Have I read that correctly?

24 A. Yes. I feel obligated to point out
25 that this would be another document that I'd give
0210 you from an earlier discussion which says: These
2 studies consistently have identified parental
3 smoking --

4 Q. Sure.

5 A. -- as one of the most important
6 predisposing factors in smoking, which would be
7 in part of the pile of stuff I had given you
8 before.

9 Q. And all of this -- in the next
10 paragraph at the bottom: Other factors that
11 cause young people in the teen years to smoke
12 curiosity and conformity pressures, status among
13 peers, need for self-assurance, striving for
14 adult status.

15 A. Right.

16 Q. Okay.

17 A. May I -- I don't know if this is
18 proper.

19 Q. Well, no.

20 A. To save you time and me time --

21 Q. Don't worry about saving me time.

22 A. Okay.

23 Q. Don't worry about saving me time.

24 A. Okay.

25 Q. Let me turn you now to page 4095,
0211 the last page.

2 A. Okay.

3 Q. And here of course the theme has
4 moved to continuation of smoking, so now the last
5 page talks about that.

6 I'm assuming you're familiar with
7 the memo, so you can agree with me that at the
8 last page the discussion was a phenomenon
9 continuing to smoke and why people continue to
10 spoke. Okay.

11 At the bottom, in the middle part of
12 page 4095, Mr. Udow says "on deeper probing, the
13 circumstances in which smoking occurs may be
14 generalized as follows," and he lists three
15 types. I want to ask you about those: 1, "as a
16 narcotic, tranquilizer, or sedative. Smokers
17 regularly use cigarettes at times of stress."

18 Do you agree with that, that's one
19 of the reasons people smoke?

20 A. Personally I believe in that.

21 Q. Number 2: "At the beginning or
22 ending of a basic activity"; do you believe
23 that's one of the reasons people smoke?
24 A. Yes, I believe that.
25 Q. And 3, automatic heavy -- excuse me,
0212

1 "automatic smoking behavior." Here heavy
2 smokers, particularly, light up at intervals
3 without much thought, and often without realizing
4 what they are doing.

5 Do you agree with that as one of the
6 reasons people smoke?

7 A. I believe that's one of the reasons
8 people smoke -- or one of the characteristics of
9 how people smoke.

10 These three points are labeled the
11 circumstances in which smoking occurs, it is not
12 labeled why people smoke.

13 Q. I know that. But I asked you, and
14 you responded that you agreed that these list
15 three reasons why people smoked.

16 A. Well -- and then I corrected myself
17 by the time we got to the third one. But I
18 believe this is a description of how people
19 smoke.

20 Q. Well more or less --

21 A. I don't know if I can articulate the
22 difference between how and why anyway.

23 Q. Well, let's approach it this way:
24 These three things listed here as a narcotic,
25 tranquilizer, sedative, is a reason in your
0213

1 judgment why people smoke along --

2 A. I believe that smokers regularly use
3 cigarettes at times of stress. I believe that
4 statement.

5 Q. No. I asked you the first part: As
6 a narcotic, tranquilizer or sedative, that's one
7 of the reasons that people smoke?

8 A. That I'm not qualified to answer
9 because I'm not a chemist or a doctor.

10 Q. No, forgetting that, but basing your
11 29 years of experience at Philip Morris, do you
12 agree that people smoke in part because
13 cigarettes are a narcotic, tranquilizer or
14 sedative?

15 A. No, I can't agree with that, I'm
16 sorry.

17 Q. Do you think nicotine is a drug?

18 A. I think -- I am not in my area, but
19 I think it's probably a pharmacological agent.

20 Q. A what?

21 A. Pharmacological substance.

22 I don't know that it's a drug or
23 not. I assume it's a drug. It's been labeled a
24 drug I believe.

25 Q. How do you define "pharmacological
0214
1 substance"?

2 A. To me that nicotine causes reactions
3 in the body.

4 Q. On number 3 there --

5 A. Yes.

6 Q. -- do you agree that one of the
7 reasons that people smoke is the phenomenon noted
8 here as "automatic smoking behavior"?

9 A. No. I think that's a self-defeating
10 argument because if one of the reasons of why
11 people smoke is they don't know they're smoking
12 that doesn't make sense.

13 I think this is much more
14 characteristic of a description of how people
15 smoke. In other words, one of the
16 characteristics of the way people use cigarettes
17 is heavy smokers light up without realizing they
18 are even smoking; I mean that's a paraphrase of
19 it. That, to me, is not a reason why people
20 smoke, it's a description of how they smoke.

21 Q. Let's try it another way.

22 A. Okay.

23 Q. Do you people that some people who
24 smoke are addicted to smoke?

25 A. I do not believe that cigarette

0215

1 smoking is addictive by the medical definition of
2 addiction.

3 I believe people like to smoke. I
4 believe that smokers enjoy smoking. And I
5 believe that they like the pleasure of smoking;
6 but I don't think that they're addicted as a
7 medically accepted term.

8 Q. Okay. Putting aside the medical
9 definition, do you believe that smokers are
10 addicted under any definition?

11 A. I believe that smokers can be sort
12 of psychologically addicted to cigarettes.

13 And so when I come back and I say,
14 yes, I agree smokers regularly use cigarettes at
15 times of stress, the part of that statement I
16 agreed with, I believe that and I think that at
17 times of stress people want a cigarette.

18 Q. Why do you say, in your testimony
19 here, that smokers can be psychologically
20 addicted?

21 A. Because I believe that when a
22 smoker, who enjoys a cigarette and likes to hold
23 it in their hand and likes to puff on it, is in
24 stressful situation, I believe that their
25 cigarette is reassuring, it's comforting to

0216

1 them.

2 Q. That's your analysis of
3 psychological addiction?

4 A. To me. As I'm describing it, yes;
5 my understanding, my feelings about it.

6 Q. What is your understanding of the
7 medical definition of addiction?

8 A. Well, my understanding of the
9 medical definition of addiction is that
10 addiction, as defined classically in medicine,
11 requires three things, neither of which
12 cigarettes exhibit.

13 The first one is that to be
14 addictive you take ever increasing dosage; and I
15 believe that every study of cigarette smoking
16 shows that people over the course of their

17 smoking lives do not increase dosage, in fact, at
18 a point start decreasing both the number of
19 cigarettes they smoke as they get older and,
20 generally, they start smoking lower tar nicotine
21 cigarettes, so that there's not this constant
22 need for ever increasing dosage.

23 Q. Before you leave that, many of these
24 people develop physical disorders, emphysema,
25 cancer and the like and other disorders and

0217

1 therefore they decrease their smoking, right?

2 A. They increase their smoking?

3 Q. Decrease.

4 A. I'm talking long before people
5 contract diseases. I'm talking that -- the first
6 four or five years that people smoke they
7 generally escalate and then after the fifth year
8 or so, or for the next 15 or however many years,
9 they start going down.

10 Q. There's only so many cigarettes you
11 can smoke in a day, right?

12 A. I'm sorry --

13 Q. You're arguing a false premise.

14 A. I am not arguing a false premise.

15 I'm arguing a statistical fact, that
16 the data -- every piece of data shows that as
17 people smoke longer they smoke fewer cigarettes
18 and, generally speaking, they shift to lower tar
19 and nicotine brands; that's not opinion, that's a
20 fact.

21 Q. Or they quit?

22 A. That has nothing to do with how many
23 cigarettes the average smoker smokes.

24 Q. Well, it has something all to do
25 with the number of cigarettes grossly smoked

0218

1 over --

2 A. I'm not talking about gross
3 cigarettes.

4 I'm talking about average cigarette
5 smoke per day, and the tar and nicotine levels of
6 those cigarettes, they go down, both of them. As
7 you look at all of the charts of consumption by
8 age. Okay.

9 So I'm saying -- you asked my
10 opinion. I'm saying the first criteria is not
11 met, which is cigarettes do not -- the way people
12 use cigarettes are not ever increasing dosage.

13 The second part of addiction -- the
14 medical definition of addiction is that the use
15 of the product causes you to hallucinate. I am a
16 smoker and I do not, when I light up a cigarette,
17 lose control, drive my car crazy --

18 Q. Where do you find this medical
19 definition of addiction that you're talking
20 about? Tell me where it is.

21 A. It's in the literature.

22 Q. What literature?

23 A. In fact I'll tell you where I read
24 it --

25 Q. Tell me where it is.

0219

1 A. -- I read it in a Philip Morris

2 submission in opposition to the Food and Drug
3 Administration proposal to take over control of
4 the cigarette. It's from outside sources
5 however; it is not a Philip Morris --
6 Q. Did Philip Morris pay for the
7 outside sources that its researchers --
8 A. No. I think they're public sources.
9 Q. All right. That's the source of
10 what you call a medical definition of addiction?
11 A. It's the source of my knowledge on
12 what the medical definition of addiction is. I
13 have also --
14 Q. Excuse me. Before we leave that,
15 I'll let you go on, but the source of your
16 knowledge of the medical definition of addiction
17 is solely Philip Morris' submission to the
18 federal government regarding this subject,
19 correct?
20 MR. HOWARD: Object to the form.
21 A. I've read it in other literature
22 also.
23 Q. What's that literature?
24 A. I don't recall, but I've read it
25 elsewhere.
0220
1 Q. Excuse me. Is it medical literature
2 you say?
3 A. Yes.
4 Q. And that's the definition you --
5 A. I think I saw it somewhere on the
6 Internet in fact.
7 Q. All right.
8 A. So the second one, just to try and
9 speed up my answer --
10 Q. Take your time.
11 A. -- is that a substance if it is
12 addictive causes you to hallucinate.
13 I do not believe that cigarettes
14 cause people to hallucinate, nor have I seen
15 people who smoke hallucinate.
16 Q. Well, let me ask you something.
17 This phrase "addiction," do --
18 people commonly talk about being addicted to
19 chocolate, being addicted to all kinds of things;
20 we all agree that people can use chocolate
21 regularly and nobody becomes hallucinatory,
22 correct?
23 A. Correct.
24 Q. You're not using that kind of
25 definition, right?
0221
1 A. No. I'm using the -- I don't know.
2 The medical textbook definition of addiction
3 is --
4 Q. What textbook?
5 A. Any textbook. I would challenge you
6 back I guess, if that's appropriate to say, I
7 know that's the medical definition of addiction.
8 Q. Who told you that?
9 A. I've read it.
10 Q. Go ahead.
11 A. The third requirement for addiction
12 is that you suffer significant withdrawal

13 symptoms from using the substance.
14 I know there are some people who say
15 they cannot quit smoking. I know there are some
16 people who say that have an extremely difficult
17 time quitting smoking. But I also know there are
18 50 million people in the United States who have
19 stopped smoking. And other than some of them who
20 dillydallied, smoke enders, largely
21 unsuccessfully, those people stopped smoking on
22 their own, on their own will power and made a
23 decision they wanted to stop smoking and stopped
24 smoking.

25 And I am not aware of any literature
0222

1 or any press coverage or any kind of information
2 that says that 50 million people in this country
3 had severe withdrawal symptoms from stopping
4 smoking. So --

5 Q. Well I want to ask --

6 A. Go ahead, I'm basically done. Let
7 me just summarize before --

8 Q. I'll let you summarize in a minute.

9 A. Okay.

10 Q. What's the source of your statement?
11 What's the data, what's the research
12 that shows the phenomenon of 50 million people
13 quitting smoking without withdrawal symptoms;
14 where is that?

15 A. That is my opinion.

16 Q. I know that. What's the basis for
17 that opinion?

18 A. Well, the 50 million is trumpeted
19 all the time as a number of ex-smokers in this
20 country. So that --

21 Q. I appreciate that. But I want to
22 know where it is in the literature, as you said,
23 that documents what you just said?

24 A. It is not -- I am not aware of
25 literature that says it. I'm aware of a large

0223
1 number of people who have given up smoking.

2 Q. In all fairness, Mr. Morgan, you
3 didn't interview 50 million people?

4 A. I sure didn't.

5 Q. You are just talking, as you say,
6 and I put this to you politely, off the seat of
7 your pants.

8 A. I'm talking off the seat of my pants
9 and off of my experience.

10 Q. Let's talk about your experience.
11 And again --

12 A. Okay.

13 Q. -- you didn't conduct, I know you're
14 a busy man, any scientific survey yourself to
15 determine the phenomenon attending 50 million
16 people quitting smoking?

17 A. No, I did not conduct any research;
18 other than knowing maybe 50 or 60 or 70 people
19 who gave up smoking.

20 Q. That's the -- the true extent of
21 your report here in this record is 50 or 60 or 70
22 people; isn't that true?

23 A. Personal knowledge, that's correct.

24 I've also read a lot of literature
25 that's not scientific, but of people and their
0224 experiences in giving up smoking.
1 Q. All right. Have you ever
2 encountered anybody in your personal experience
3 who gave up smoking and who went through
4 withdrawal symptoms?
5 A. Yes.
6 Q. How many?
7 A. I know one friend who told me that
8 they were dizzy and nauseous for two days.
9 Q. And you've given us now your
10 diagnosis with respect to -- your lay diagnosis
11 on the matter of addiction?
12 A. Yes.
13 MR. ADELMAN: All right. Mark
14 this, please.
15 (Plaintiffs' Deposition Exhibit 21
16 was marked for identification and is annexed
17 hereto.)
18 MR. ADELMAN: The witness has
19 Exhibit 21 there and I think, just to save time,
20 let me give you Exhibit 22 as well, which is a
21 related document.
22 Miss Reporter, thank you.
23 Mr. Morgan, review them both
24 together.
25
0225 (Plaintiffs' Deposition Exhibit 22
1 was marked for identification and is annexed
2 hereto.)
3 THE WITNESS: I'm ready.
4 BY MR. ADELMAN:
5 Q. All right. Can you tell us what
6 Exhibits 21 and 22 are?
7 A. Exhibit 21 is a memo written by me
8 to Mr. J.T. Landrey, who was my boss at the time,
9 on April 29th, 1975; it's a confidential memo.
10 And Exhibit 22 is a memo written on
11 May 5th, roughly a week later, from Mr. Landry to
12 Mr. Goldsmith, who was his boss, on the same
13 subject; the subject being the nicotine levels of
14 Marlboro and Winston in particular.
15 Q. What was your position in the
16 company in 1975?
17 A. This is in that period of time where
18 I was either the director of brand management
19 reporting to Mr. Landry or the assistant director
20 of marketing reporting to Mr. Landry. I'm not
21 sure which I was, but in either case I would have
22 reported directly to Mr. Landry.
23 Q. In here of course you're pointing
24 out, according to the FTC, the nicotine
25
0226 percentage in several Philip Morris brands had
1 decreased notably, Marlboro red, red box, soft
2 and so forth.
3 A. Not the percentage, that's not the
4 way it's measured. It's the milligrams of
5 nicotine.
6 Q. You said as a marketing matter.
7 I'm reading Exhibit 21, second
8

9 paragraph: There is, in addition to possible
10 marketing differences, one substantial product
11 line difference between the two companies.
12 MR. HOWARD: Marketing
13 differences.
14 MR. ADELMAN: Yes, that's right.
15 Q. Since January 1973, RJR has held
16 nicotine deliveries on their major brand packings
17 constant while other nicotine deliveries have all
18 dropped substantially.
19 A. Our, our nicotine.
20 Q. I can't read my own scratch.
21 What action was taken as a result of
22 these two memos, if any?
23 A. Well, sequentially I concluded my
24 memo by telling what was true. I mean again I
25 was a product manager, I didn't know anything
0227
1 about actually the product design or what the
2 design -- as I said: While I am not sufficiently
3 knowledgeable to understand the potential results
4 of this situation, i.e., nicotine differences in
5 terms of smoker satisfaction, the situation is a
6 clear difference in either strategy or technology
7 between the two companies during the past two
8 years.
9 Okay. So what I'm basically saying
10 is in the job I had I would look at all kinds of
11 differences. I would look at tar/nicotine
12 differences, the difference between how much
13 money was being spent in Chicago on the two
14 brands, the differences in the color of
15 packaging; I was doing comparative analysis.
16 Q. Well, let's talk about this, if you
17 will. I mean the bottom line is, was any policy
18 put into place as a result of this
19 communication?
20 A. Well Mr. Landry then wrote to
21 Mr. Goldsmith, if I could go through this, and in
22 his memo he says: It's an important matter to
23 follow up. And he recommended that it be
24 thoroughly explored in manufacturing and R&D and
25 every attempt would be made to return the
0228
1 nicotine delivery to more suitable levels.
2 I am not aware that anything was
3 done other than I'm aware of the memo that I
4 can't date, but would obviously be after
5 May 15th, that someone in Richmond R&D wrote in
6 response to this on the subject of the difference
7 in nicotine levels between Winston and Marlboro.
8 And I don't remember the author and I don't know
9 that anything was actually done beyond a response
10 memo out of research and development.
11 Q. Right. Question.
12 A. Yes.
13 Q. Were you pointing out here or did it
14 result that over the time period involved, from
15 January 7th through to March of '75, Marlboro's
16 sales had fallen; it doesn't say that here, but
17 did that happen to your recollection?
18 A. I believe that Marlboro sales were
19 going up. It had -- I think in 1974 I believe it

20 had, what I will call, a softening of its upward
21 trend.
22 Q. Well, let me ask you to define -- in
23 Exhibit 21 you say: These differences might
24 explain the shifts in market performance that we
25 are experiencing.

0229

1 A. Right.

2 Q. What were the shifts in market
3 performance you're talking about?

4 A. I just said it. I think that when
5 Marlboro was growing it was growing less rapidly
6 than it did in the early 1970s.

7 Q. Was Winston growing?

8 A. No. Winston was declining, but it
9 may have been declining less rapidly than it had
10 been.

11 Q. Therefore, therefore the decrease in
12 nicotine content in Marlboro and the maintenance
13 of nicotine content in Winstons demonstrated the
14 greater the nicotine the better the sales?

15 A. No, that's the wrong conclusion.

16 My memo said, hey, we know there's a
17 difference -- the performances are still
18 changing, here is a difference -- a statistical
19 difference I found; I don't know what to make of
20 it, is it important?

21 Q. Well, then Mr. Landry writes his
22 memo, Exhibit 22. At the bottom of that memo he
23 says: Every attempt should be made to return the
24 nicotine delivery to more suitable levels; what
25 is meant by "more suitable levels"?

0230

1 A. I do not know because Mr. Landry was
2 a marketer and not a scientist.

3 In the previous paragraph he says,
4 in his opinion, that Marlboro nicotines has
5 dropped so sharply below that of Winston it puts
6 us at a competitive disadvantage I believe. I
7 mean that's his opinion.

8 Q. All right. And finally, do you know
9 whether any change in the nicotine level of
10 Marlboro was made after this?

11 A. I believe it was not.

12 Q. Never?

13 A. Well, it changes. It changes every
14 year fractionally because of the difference in
15 the tobacco that's used.

16 I believe that it -- I do not
17 remember that Marlboro's nicotine delivery was
18 changed as a result of this memo. It may have
19 been changed subsequent to this memo, down the
20 road for other reasons.

21 But I am not aware that it changed
22 as a result of this memo. In fact the memo --

23 Q. You keep saying "as a result of this
24 memo." I wanted to know whether it ever changed
25 after May 1974?

0231

1 A. Of course it changed. It changes up
2 and it changes down so that the tar -- the tar --
3 the average basically -- I mean the government
4 reports what the tar and nicotine delivery is of

5 the brand, and it will go up a tenth of a
6 milligram, it will go down a tenth.
7 It's designed to be held constant,
8 but tobacco is an agricultural crop and doesn't
9 always yield itself to constant.
10 Q. But did you know -- you certainly
11 know --
12 THE VIDEOGRAPHER: Going off the
13 record, 3:08 p.m.
14 (Recess taken.)
15 THE VIDEOGRAPHER: Back on the
16 record, 3:09 p.m.
17 BY MR. ADELMAN:
18 Q. Mr. Morgan, you certainly know that
19 the nicotine content of cigarettes can be changed
20 in the manufacturing process, don't you?
21 A. Yes.
22 Q. Now --
23 A. Excuse me. The nicotine delivery
24 can be changed.
25 Q. No. The content, the amounts of
0232
1 nicotine in a cigarette could be changed in the
2 manufacturing process; isn't that true?
3 A. Yes. It would be true by using
4 different kinds of leaf; yes, that's true.
5 Q. Right. Who is George Weissman?
6 A. We mentioned him earlier. George
7 Weissman was chairman of the board of Philip
8 Morris after Joseph Cullman.
9 Q. Do you recall, in late -- or early
10 1981 and thereafter, Mr. Weissman asked you to
11 participate on the committee to deal with the --
12 what are called well-placed and well-executed
13 attacks by various antismoking groups upon the
14 cigarettes industry?
15 MR. HOWARD: What time period?
16 MR. ADELMAN: Yes, February 1981.
17 A. I don't recall that specifically.
18 I'm not saying he didn't; I just
19 don't recall it worded that way.
20 MR. ADELMAN: We'll have this
21 marked.
22 (Plaintiffs' Deposition Exhibit 23
23 was marked for identification and is annexed
24 hereto.)
25 MR. ADELMAN: That's Exhibit 22 I
0233
1 believe.
2 MR. HOWARD: 23.
3 MR. ADELMAN: Yes, sir.
4 BY MR. ADELMAN:
5 Q. Will you review that?
6 A. Okay.
7 Q. Does it refresh your memory about
8 the committee that Mr. Weissman appointed you to?
9 A. It doesn't. I don't mean to sound
10 like I'm either stupid or being a jerk, it
11 doesn't.
12 I do not remember this committee at
13 all. I don't remember even going to a meeting at
14 this committee, even though it says the first
15 meeting will take place on March 19th; I truly do

16 not remember it.
17 Q. Do you remember something called the
18 Communications Committee?
19 A. Of the Tobacco Institute?
20 Yes, I do.
21 Q. That was not this committee, this
22 international committee?
23 A. No. The names on here are internal
24 to Philip Morris.
25 Q. So do you have any knowledge of the
0234
1 committee as described in Exhibit 23?
2 A. I'm sorry I don't. I see that I was
3 put on the committee, I do not remember it at
4 all.
5 Q. It states here in the fourth
6 paragraph that: We might begin informal
7 bimonthly meetings with an agenda and so forth;
8 do you remember any such meetings?
9 A. I don't.
10 Q. Moving on now, did you ever
11 participate in the Communications Committee?
12 A. Of the Tobacco Institute?
13 Q. Yes.
14 A. Yes, I did.
15 MR. ADELMAN: Let me mark this as
16 Exhibit 24.
17 (Plaintiffs' Deposition Exhibit 24
18 was marked for identification and is annexed
19 hereto.)
20 THE WITNESS: Okay.
21 BY MR. ADELMAN:
22 Q. Are you familiar with this?
23 A. Yes.
24 Q. You wrote this memo?
25 A. Yes.
0235
1 Q. And to Mr. Cullman and Mr. Bowling?
2 A. Yes.
3 Q. Mr. Cullman is of course chairman of
4 the board of Philip Morris.
5 Who is Mr. Bowling?
6 A. No, I'm sorry, that's not correct.
7 This is a different Mr. Cullman.
8 This is a Mr. H. Cullman.
9 Q. All right.
10 A. J. Cullman, Joseph Cullman would be
11 chairman; Hugh Cullman, his nephew, would have
12 been at that point in time chairman of the --
13 Philip Morris Incorporated I believe.
14 Q. How about Mr. Bowling?
15 A. Mr. Bowling was the executive or
16 senior vice president of public affairs for the
17 corporation, Philip Morris Corporation.
18 Q. You're reporting back as a delegate
19 I take it to the TI?
20 A. Yes. TI, I'm sorry.
21 Q. Who are the gentlemen who are
22 copied, Pollack, Ahrensfield and Holtzman?
23 A. Shep Pollack would have been the
24 president of Philip Morris USA Incorporated at
25 that point; and I would have reported to
0236

1 Mr. Pollack as the executive VP of marketing.
2 Hugh Cullman would have been
3 Mr. Pollack's boss as chairman. Ahrensfield and
4 Holtzman were in-house counsel.
5 Q. Lawyers.
6 A. Ahrensfield, general counsel --
7 Philip Morris general counsel.
8 Q. How long did you serve on the
9 Communications Committee?
10 A. I'm going to guess at this because I
11 don't remember sort of really officially. I
12 would guess until June of '83 when I left Philip
13 Morris.
14 Q. When did you start on the
15 Communications Committee?
16 A. I do not know, but I would guess it
17 would be around the period of time of this memo.
18 Q. 1981 in March?
19 A. Yes. Because it sounds -- if you'll
20 agree with this, it sounds sort of like an
21 organizational -- you know, a getting started
22 report.
23 Q. And you quoted indeed a draft
24 statement of the committee; let me go through
25 that with you.

0237

1 It talks about: "The Communications
2 Committee is committed to instituting national
3 advertising to reenforce the smoker, his choice
4 to smoke and the custom of smoking." Was that
5 done by you and others?
6 A. No. I don't believe -- I don't
7 believe that any actual product came out of this
8 Communications Committee.
9 Q. Or TI itself?
10 A. I can't speak for TI, but I do not
11 believe that this statement was ever achieved.
12 Q. The statement also says: "This will
13 be accomplished by attacking bad research;
14 attacking researchers themselves, where
15 vulnerable; attacking the unreasonableness of
16 legislative segregation; attacking the
17 bureaucracy and personal aggrandizement of
18 certain antismoking organizations."
19 Have I read that correctly?
20 A. Yes, you have.
21 Q. Did you write that?
22 A. Well, I wrote it in this memo and
23 I'm sure that I was part of writing this as a
24 committee member. I'm not --
25 Q. Go ahead, sir.

0238

1 A. No.
2 Q. Did you approve of their goals here?
3 A. Yes.
4 Q. Then it says: In effect, the
5 Communications Committee is readying advertising
6 to stand up to the industry's detractors and by
7 that means to support our smoking population.
8 A. Correct.
9 Q. And you supported that goal too?
10 A. Yes, I did.
11 Q. Did any ads come into being and be

12 issued as a result of this?
13 A. Not that I'm aware of.
14 Q. Why was a Communications Committee
15 formed, do you know?
16 A. As I remember it, it was formed
17 because at this period of time there were some --
18 at least from the perspective of the company, and
19 there were some fairly outrageous things going
20 on -- this was a period of time where groups GASP
21 and ASH, which were zealously anticigarette, were
22 going around shooting water pistols at smokers
23 and generally making smokers feel as if they were
24 criminals.

25 There was a series of bad research
0239
1 reports that had come out. There was evidence
2 that some of the researchers were compromising
3 scientific standards. And there were some
4 legislative proposals that were getting more and
5 more discriminatory and reasonable.

6 Q. Well, let me ask you some questions.
7 What do you mean when you say you
8 were going to attack bad research? Is bad
9 research negative research insofar as the smoking
10 industry is concerned?

11 A. No. No. No. No. No. No. No.
12 I'll give you an example of recent time because
13 I've seen --

14 Q. Well let's talk about '81, if you
15 don't mind.

16 A. I can use -- all right.

17 Q. Not that's --

18 A. Go ahead.

19 Q. Are you saying scientifically bad
20 research?

21 A. I'm saying scientifically bad
22 research.

23 Q. And then it says "attacking
24 researchers themselves, where vulnerable."

25 A. Yes. If a researcher had

0240
1 intentionally published questionable or invalid
2 research as a result of compensation, as a result
3 of financial considerations, or the desire to get
4 ahead or whatever, then this goal of this was to
5 identify the lack of integrity of researchers, if
6 that were found.

7 Q. Were any steps taken to work on
8 these attacks, in other words, research and
9 investigation done?

10 A. Not that I'm aware of.

11 Q. You conclude the memo by saying
12 that: "Judge and Stevens as well as Horrigan are
13 thinking this way." Are they officials of other
14 tobacco companies?

15 A. Yes.

16 Q. Does this proposal that you quote
17 here -- was this proposal agreed by all of the
18 members of the Communications Committee?

19 A. I can't tell from this memo, but I
20 would think it was.

21 Q. Let me move to something else here.
22 Are you familiar during your time at

23 Philip Morris with something called Inbifo?
24 A. Inbifo.
25 Q. Inbifo?
0241
1 A. Yes.
2 Q. I think the court reporter would
3 appreciate a spelling for Inbifo.
4 A. I think it's I M B I F O.
5 MR. HOWARD: N as in Nancy.
6 THE WITNESS: I N, or in. I N.
7 MR. HOWARD: In.
8 THE WITNESS: I N B I F O.
9 Q. What does the acronym "Inbifo" stand
10 for, if you know?
11 A. I have absolutely no idea.
12 Q. It's an acronym for German words, is
13 it not?
14 A. I do not know.
15 Q. What is Inbifo, or what was Inbifo?
16 A. Inbifo is a research facility that,
17 as I remember, or I think was in Cologne,
18 Germany.
19 Q. What did Inbifo do, to your
20 knowledge?
21 A. The only thing I'm aware of that
22 Inbifo did was that it conducted animal studies
23 relating to cigarettes.
24 Q. What connection did Philip Morris
25 have with Inbifo?

0242
1 A. I believe Philip Morris owned it or
2 purchased it.
3 Q. When did it purchase Inbifo?
4 A. I do not know.
5 Q. Well, did it purchase Inbifo during
6 the time you worked for Philip Morris?
7 A. I do not know. It was an area I was
8 not involved with.
9 Q. Did you ever visit Inbifo?
10 A. I did not, no.
11 Q. To your knowledge, did Philip Morris
12 personnel, that is, its American personnel visit
13 there?
14 A. Yes.
15 Q. Did they do research there?
16 A. That I do not know.
17 Q. To your knowledge were any --
18 A. Excuse me, the Americans who
19 visited?
20 Q. Yes.
21 A. Did they do research?
22 Q. Yes.
23 A. I do not know that.
24 Q. Did any Americans go there to
25 research, in other words, as distinguished from a

0243
1 visit, go there and do research?
2 A. I do not know that.
3 Q. Does that mean that it could have
4 happened and you just don't know about it?
5 A. I do not know.
6 Q. Does Inbifo still exist?
7 A. It existed as of November 1st, 1997

8 when I left Philip Morris, yes.
9 Q. To your knowledge, were any records
10 of Philip Morris of any kind or sort of
11 description ever sent to Inbifo?
12 MR. HOWARD: Let me object at this
13 point and ask for clarification. I think you
14 have to be precise about Philip Morris, what you
15 mean, which company?
16 MR. ADELMAN: All Philip Morris
17 companies.
18 MR. HOWARD: If Philip Morris
19 owned Inbifo they have documents there.
20 MR. ADELMAN: I'll ask him more
21 clear.
22 BY MR. ADELMAN:
23 Q. Global, were there any records of
24 Philip Morris companies, by whatever names,
25 titles or any subsidiaries ever sent to Inbifo?
0244
1 A. I have no basis of knowing that.
2 Q. Again, that could have happened, you
3 just don't know about it?
4 A. Correct.
5 MR. ADELMAN: May I have this
6 marked, please.
7 (Plaintiffs' Deposition Exhibit 25
8 was marked for identification and is annexed
9 hereto.)
10 BY MR. ADELMAN:
11 Q. Mr. Morgan, Exhibit 25 is in front
12 of you; would you review, it please?
13 A. Okay.
14 Q. Do you recognize Exhibit 25?
15 A. I do recognize it. And again, I
16 believe this is -- I first saw it during the
17 Minnesota deposition in 1997.
18 Q. Indeed, the copy that we're using
19 has a little stamp and a fill in section at the
20 stop that says Plaintiffs' Exhibit 91 as such.
21 A. Right. I even recognize the name of
22 the court reporter. I think it was the Minnesota
23 court stenographer.
24 Q. Yes. Do you recognize the
25 handwriting on Exhibit Number 25?
0245
1 A. I do not.
2 Q. Did you testify, when you testified
3 in a deposition in the Minnesota case, regarding
4 the handwriting on Exhibit 25?
5 A. I do not recall. I believe it was
6 presented to me as the handwriting of a certain
7 person and I said I have no reason to disagree
8 with that. I do not recognize the handwriting.
9 Q. Whose handwriting was it recognized
10 as?
11 A. Thomas Osdene's.
12 O S D E N E, I believe it is.
13 Q. Who is Mr. Osdene?
14 A. Mr. Osdene was an executive in the
15 Richmond research and development department.
16 Q. Keeping your voice up, sir --
17 A. I'm sorry.
18 Q. -- to your knowledge, when did he

19 work at Richmond research and development
20 department of Philip Morris?
21 A. Well, I know he worked there in the
22 mid 1970s because I worked with him on a product
23 development project. And my guess is that he
24 worked there in the '70s up through most of
25 the '80s.

0246

1 Q. What was the product development
2 project you worked on?
3 A. Merit cigarettes.
4 Q. And specifically, what was the Merit
5 cigarettes product development project?
6 A. Dr. Osdene did some of the screening
7 of the product before it was introduced on the
8 market.
9 Q. What was the characteristics of the
10 Merit cigarettes that were made unique, if you
11 know?
12 A. Well, Merit cigarettes were unique
13 because they used a proprietary flavor formula.
14 Q. Rather than what?
15 A. It was just a recombination of
16 flavoring elements, it wasn't rather than
17 anything.
18 Q. Now, referring you to the contents
19 of Exhibit 25, first line says, I believe in the
20 hand of Dr. Osdene: Ship all documents to
21 Cologne by -- I can't read the rest there. Do
22 you know what that means?
23 A. No.
24 Q. Were you asked about what that meant
25 in Minnesota when you gave your deposition?

0247

1 A. I believe I probably was; and I
2 don't even remember what I answered, but I do not
3 know what that meant.
4 I can read it, but I don't know what
5 it means.
6 Q. Let me read the first few lines,
7 number 2: Keep in Cologne; 3, okay to phone and
8 telex, these will be destroyed.
9 Now, you are aware that Dr. Osdene
10 of course is connected with eventually Inbifo in
11 Cologne, are you not?
12 A. I am generally aware of that, yes.
13 Q. Yes. This suggests, doesn't it, in
14 the first three entries in his hand, the notion
15 that he is documenting the note of shipping
16 documents to Cologne, keeping them there; is that
17 a fair inference?
18 A. Yes.
19 Q. Did you ever hear or happen to
20 become aware of Philip Morris, or any of its
21 personnel or any of the people directed by Philip
22 Morris personnel, shipping documents of any sort
23 to Cologne?
24 A. No.
25 Q. Why would Philip Morris be doing

0248

1 that by the way, if in fact that happened?
2 MR. HOWARD: Object to the form,
3 speculation.

4 A. I have no idea. This was an area I
5 was not involved in.

6 Q. Would it disturb you if in fact it
7 showed the predicate, that was that Phillip
8 Morris was shipping documents to Cologne in order
9 to avoid their disclosure and discovery of
10 litigation in the United States; would that
11 bother you?

12 A. Yes, it would.

13 Q. Why?

14 A. Because it seems like a deceptive
15 thing to do.

16 Q. The third entry says: Okay to phone
17 and telex, these will be destroyed, again
18 suggesting the destruction of documents; would
19 you have approved that?

20 A. I'm sorry. Would you ask the
21 question again?

22 Q. Sure, sir. Section 3 there says:
23 Okay to phone and telex, these will be destroyed,
24 suggesting of course that records of phone and
25 telexes would be destroyed; would you have
0249

1 approved of that had you known about it?

2 MR. HOWARD: Objection to form as
3 being --

4 MR. ADELMAN: Well all of these
5 are predicated -- I take your point, counselor.
6 All of these are predicated on if he had known
7 because he said he didn't know about it --

8 MR. HOWARD: But it's also your
9 reading of number 3. You said if the records of
10 the phone calls and telexes were destroyed,
11 that's your inference.

12 MR. ADELMAN: My inference, sure.

13 THE WITNESS: I was given a
14 question that counsel said to me: I understand
15 you don't know, so we got that on the record; but
16 then the second part of the question was that
17 these materials would relate to discovery
18 involving litigation, and my answer when you
19 said: Would you think that was okay, I said no.
20 All right.

21 If you said to me: Is it okay to
22 have documents and destroy them in general, yes,
23 that's okay; I mean you don't keep everything.
24 I'm answering -- I just want to make this -- get
25 it straight between you and me.

0250

1 You're saying -- you asked
2 specifically about documents that were subject to
3 discovery in litigation.

4 Q. No. I was asking a little broader.

5 A. Okay. Let's go back on it. I think
6 it's important.

7 Q. Documents that not only were under
8 disclosure requests in litigation, but that could
9 be in future litigation the subject of disclosure
10 requests; in other words, anticipating litigation
11 down the road, the possibility of litigation,
12 these documents are hidden and possibly
13 destroyed; that wouldn't be right either, would
14 it?

15 A. Well, it's harder for me to answer
16 that because over the years I would read
17 something and toss it with no perception -- well,
18 we saw a number of documents today that had my
19 name as being copied on them, I didn't have those
20 documents, all right, because I'd read them, I
21 either passed them on or I would read them and
22 throw them out. So as you get broader it's
23 harder for me to generally agree that, A, all
24 documents should be kept and, B, that one would
25 be smart enough 20 or 30 years in advance to know

0251

1 what would be subject in the future to
2 litigation.

3 I am very comfortable saying that if
4 I knew or someone knew that a document was
5 subject to discovery as it related to litigation
6 it should not be destroyed or hidden.

7 Q. You've only answered half of the
8 question.

9 A. Then I'm sorry, I'm really trying.

10 Q. I know you are, so let me try again.

11 Assuming for the moment the
12 hypothesis that someone indicating that trouble
13 could arise in the future in litigation if this
14 document were available for discovery and it were
15 shipped overseas, you wouldn't approve of that,
16 would you?

17 A. No.

18 Q. Okay. Number 5, we will -- can you
19 read that well?

20 A. Yes, I think so. Go ahead.

21 Q. You help me.

22 A. Monitor.

23 Q. Yes.

24 A. In person every two-three months,
25 that's how I read it.

0252

1 Q. Do you know what that refers to?

2 A. I have no idea.

3 Q. How about number 6?

4 A. You're turn. I can't read it.

5 Q. If important letters have to be sent
6 please send them to home, I will act on them and
7 destroy.

8 A. What's the word going up on the
9 slant there after letters?

10 Q. And documents.

11 A. If important letters --

12 Q. Or documents.

13 A. -- or documents have to be sent
14 please send to home.

15 Q. To home, I will act on it and
16 destroy.

17 A. That's how I read it.

18 Q. Accepting our joint translation
19 here, does that disturb you as suggesting that at
20 least one person employed by Philip Morris had
21 the notion of receiving important information at
22 home and then destroying it?

23 A. Yes.

24 Q. Do you know, or have you come to
25 learn, who it is that caused Mr. Osdene to write

0253

1 these things that appear on Exhibit 25?

2 A. I have absolutely no idea.

3 Q. Line 8 says: Call U H, R R and T S
4 O direct in something in Cologne to discuss; do
5 you know who those initials refer to?

6 A. I have no -- no. I do not know who
7 any of those people indicate.

8 Q. Let me ask you generally, Mr. Udow a
9 long time ago made a statement in documents in a
10 Philip Morris file as follows -- this is
11 Mr. Udow, he discussed a widely held theory that
12 most people smoke for the narcotic effect of
13 relaxing, a sedative that comes from the
14 nicotine.

15 He went on to say, although, more
16 people talk about taste. It is likely the
17 greater number smoke for the narcotic value that
18 comes from nicotine; would you agree with that?

19 MR. HOWARD: Objection to form.

20 A. I'd like to say that -- did Dr. Udow
21 say that or was he quoting from someone else?

22 Q. It's a memo he wrote.

23 A. Well that doesn't answer the
24 question. I'd like to know whether Dr. Udow said
25 it or whether it's quoted from another source.

0254

1 Q. Sure. Well I'm reading to you from
2 a news report of the Los Angeles Times of
3 October 23, 1996 that in turn quotes the memo of
4 Dr. Udow.

5 A. Is it the memo we looked at?

6 Q. May 24th, 1972.

7 A. Well, I guess actually the source of
8 the information is not relevant to your question,
9 if I remember your question.

10 MR. ADELMAN: Yes. Here. Let's
11 make it -- here. We'll conveniently mark this
12 for the witness. I don't have any other copies.

13 MR. HOWARD: You're marking the
14 newspaper report as opposed to the memo it
15 purports to be quoting?

16 MR. ADELMAN: Right. You trust
17 the LA Times I'm sure?

18 MR. HOWARD: Not necessarily.

19 THE WITNESS: Don't get me started
20 on that, we'll never get out of here.

21 MR. ADELMAN: Let's proceed here.
22 Would you mark this please.

23 (Plaintiffs' Deposition Exhibit 26
24 was marked for identification and is annexed
25 hereto.)

0255

1 MR. ADELMAN: This is Exhibit 26.
2 I represent it to be a reprint of the Los Angeles
3 Times edition of October 23, 1996 and I circled
4 the two sentences I'm inquiring the witness
5 about, it's just to refresh your memory first of
6 all.

7 Off the record a second.

8 THE VIDEOGRAPHER: Off the record.

9 Going off the record, 3:35 p.m.

10 (Discussion off the record.)

11 (Recess taken.)
12 THE VIDEOGRAPHER: Back on the
13 record, 3:41 p.m.
14 BY MR. ADELMAN:
15 Q. All right. Mr. Morgan, have you
16 reviewed Exhibit Number 26?
17 A. Yes, I have.
18 Q. And in particular, the two sentences
19 which this article represents Mr. Udow made,
20 quote: "A widely held theory... that most people
21 smoke for the narcotic effect relaxing, sedative
22 that comes from the nicotine"; and also, quote:
23 "Although more people talk about 'taste,' it is
24 likely that greater numbers smoke for the
25 narcotic value that comes from the nicotine."

0256

1 Would you agree with those
2 statements?
3 A. I neither agree with them, nor do I
4 accept that those are Mr. Udow's words.
5 Q. Well, we can't go any further then
6 if you don't accept that those are Mr. Udow's
7 words because -- we'll leave it at that.
8 A. They're in his memo, but I do not
9 believe that those are his opinions.
10 We have a memo on Exhibit 20 which
11 is a long memo and throughout Dr. Udow is stating
12 other people's words and other people's views,
13 including Dr. Horn and people like that, and it's
14 not clear from this that these are Dr. Udow's
15 words or his opinions as opposed to discussing a
16 widely held theory, which could be from someone
17 else.

18 MR. ADELMAN: I'll just, for the
19 record, stand by the LA Times and we'll move on.

20 THE WITNESS: Okay.
21 Q. It's your position, and I just
22 stated what plaintiffs' position was.

23 Let me ask you now, moving to
24 another issue, and I'll ask some pointed
25 questions here.

0257

1 A. Okay.
2 Q. Over time, and it's a long time, 29
3 years, while working for Philip Morris did you
4 have occasion -- and I know you did, you did have
5 occasion from time to time to consult with
6 counsel about various issues.

7 I don't want to know the
8 communications, I just want to know whether you
9 did?

10 A. Yes, I did.

11 Q. Next I want to know whether the
12 counsel that you're referring to in your answer
13 was inside counsel for Philip Morris or did they
14 include counsel from outside law firms?

15 A. With the exception of one counsel
16 from outside it was totally within Philip Morris.

17 Q. And I don't mean your present
18 counsel.

19 A. No. I'm talking historically.

20 Q. Again, I don't want to find out what
21 you said or interacted between the two of you,

22 but can you identify that counsel or firm?
23 A. Yes. Yes. There were two lawyers,
24 one was named Abe Krash and the other was named
25 Jerome Chapman; and they were with Arnold &
0258
1 Porter in Washington, D.C.
2 Q. When was it that you consulted with
3 them?
4 A. I would consult primarily in the
5 1960s and the 1970s; and unless my counsel has an
6 objection, I have no objection to telling you
7 what the subject is.
8 Q. Well I just want to -- he might.
9 MR. HOWARD: Well it's not your
10 privilege to waive.
11 THE WITNESS: Okay.
12 Q. All right. I think I can ask you
13 this: Did it have to do with any litigation?
14 A. No, it did not.
15 Q. So you were given advice about
16 matters internal with the company?
17 A. No. They were matters related --
18 Q. Thank you. I'll tell you to stop.
19 A. Okay. But they were related to
20 executorial matters in marketing.
21 MR. HOWARD: The subject is given,
22 but that's fine.
23 Q. When you were doing work for CTR did
24 you ever consult with counsel in that capacity;
25 in other words, CTR's counsel or lawyers that
0259
1 worked with or for CTR?
2 A. No, I never consulted with them.
3 Q. How about TI, Tobacco Institute?
4 A. I never consulted with them.
5 Q. Are you familiar with something
6 called a Committee of Counsel?
7 A. Yes, I am.
8 Q. What is or was the Committee of
9 Counsel?
10 A. I believe the Committee of Counsel
11 was a committee on which the general counsel or
12 their deputy of each of the members of the
13 Tobacco Institute, that sentence structure, it
14 was a committee on which was representation of
15 the legal department of each of the members of
16 the Tobacco Institute.
17 Q. Do you ever have occasion to meet
18 with the Committee of Counsel or any
19 representative of it?
20 A. I have definitely met with a
21 representative of it, which would be the Philip
22 Morris lawyer.
23 Q. Okay. Let me rephrase that
24 question. I think we can satisfy the issue
25 here.
0260
1 In connection with the business of
2 the Committee of Counsel, did you ever meet with
3 a lawyer?
4 A. No.
5 Q. What was the function, if you know,
6 of the Committee of Counsel?

7 A. I do not know. I'd like to -- I'd
8 like to change that answer because that's not
9 reflective of really where -- when I was on the
10 board of the Tobacco Institute the last two years
11 I know what the function of the Committee of
12 Counsel was, and I think I said I just didn't
13 know what the function was.

14 Q. That's correct. What --

15 A. The function was to represent the
16 legal interests of the industry. I do not know
17 the specifics of what went on at those meetings.

18 Q. Do you know what the Nicotine
19 Receptor Program was at Philip Morris?

20 A. No, I do not.

21 MR. ADELMAN: Can you mark this as
22 the next exhibit.

23 (Plaintiffs' Deposition Exhibit 27
24 was marked for identification and is annexed
25 hereto.)

0261

1 BY MR. ADELMAN:

2 Q. Can you, sir, review Exhibit 27?
3 And here, with particular reference to Bates
4 page 7057, 7058 and 7059.

5 A. Okay. I've looked at it.

6 (Plaintiffs' Deposition Exhibit 28
7 was marked for identification and is annexed
8 hereto.)

9 BY MR. ADELMAN:

10 Q. And to assist you, I'm going to move
11 ahead and give you Exhibit 28, which I'll
12 represent to you, I believe, is a final version
13 of Exhibit 27.

14 A. Okay. Should I read this to see if
15 there are any differences?

16 Q. Well, I'm going to point out some,
17 but read it to familiarize yourself with it,
18 sir.

19 A. Okay. Okay.

20 Q. Have you read both 27 and 28 to your
21 satisfaction?

22 A. Yes.

23 Q. Okay. Have you seen Exhibit 27 or
24 28 previously to today?

25 A. I don't believe I've seen either.

0262

1 Q. Let's go to 28 for a moment.

2 A. Okay.

3 Q. Mr. H. Wakeham was who, sir?

4 A. He would have been the head of
5 Richmond research and development.

6 Q. At Philip Morris?

7 A. At Philip Morris.

8 Q. And Mr. Goldsmith you've already
9 described as the chairman.

10 A. Mr. Goldsmith was the president, but
11 at this point in time I believe that
12 Mr. Goldsmith was in fact the head of operations,
13 which would have included manufacturing and R&D.

14 Q. At Philip Morris?

15 A. At Philip Morris.

16 Q. Let me represent to you that
17 Exhibit 27 is a draft of Mr. Wakeham's memo so

18 that we can talk about it.
19 A. Okay.
20 Q. The subject of this memo in both
21 forms is biological research by Philip Morris,
22 correct?
23 A. It looks to me that's what it is.
24 Q. Were you aware of, in any way, the
25 decision making process of whether Philip Morris
0263
1 should undertake biological research?
2 A. No, not in the slightest.
3 Q. Were you aware of the decisions to
4 be made about that subject?
5 A. No, I was not.
6 Q. In the second page of Exhibit
7 Number 27, last lines there, in the draft,
8 quoting: While we have maintained to the best of
9 our ability a technical intelligence system
10 designed to alert to any studies associated with
11 tobacco smoke, these are closely guarded, and our
12 knowledge usually comes after the fact in the
13 form of publications. More importantly, it is
14 our experience that research studies -- study
15 funds provided by the tobacco industry through
16 offices of the AMA, as well as public funds, are
17 applied to studies oriented to seek out and
18 highlighting the negatives aspects with tobacco
19 smoke.
20 Have I read that correctly?
21 A. No.
22 Q. What have I --
23 A. Well it says "negatives associated
24 with tobacco smoke."
25 Q. Yes, you're correct; negatives
0264
1 associated with tobacco smoke.
2 A. And then back in the second line you
3 read: Intelligence systems designed to alert to
4 any studies and it's "to be alert to any
5 studies."
6 Q. All right. With those corrections,
7 thank you very much, did you have awareness at
8 any time, including now, of what's being referred
9 to here in Mr. Wakeham's memo as "intelligence
10 systems designed to be alert to any studies"?
11 A. No.
12 Q. And moving over to page 7058 of the
13 draft, at the bottom paragraph. I read this
14 sentence to you in the draft: We have reason to
15 believe that in spite of gentleman's agreement
16 from the tobacco industry in previous years that
17 at least some of the major companies have been
18 increasing biological studies within our own
19 facilities.
20 Okay. Have I read that --
21 A. Yes.
22 Q. What is the gentleman's agreement
23 that he is referring to, do you know?
24 A. I do not know. I've heard the
25 phrase in connection, again, with depositions. I
0265
1 do not have any firsthand knowledge or really
2 even remote knowledge of what the gentleman's

3 agreement was.
4 Q. Do you have any knowledge?
5 A. No, other than I know the phrase.
6 Q. Well doesn't this suggest, as you
7 read this document, that the gentleman's
8 agreement was the competing cigarette companies,
9 including Philip Morris, would not do research of
10 a biological nature?

11 MR. HOWARD: Object to the form.
12 MR. ADELMAN: Well, if he knows.
13 MR. HOWARD: Objection to form.
14 MR. ADELMAN: Excuse me, just a
15 second.

16 Q. Doesn't the notion "gentleman's
17 agreement" as referred to here, was that the
18 competing cigarette companies, including Philip
19 Morris, would not engage in biological research?

20 MR. HOWARD: Objection to form.

21 MR. ADELMAN: You can answer.

22 A. I have no basis to know what the
23 gentleman's agreement was.

24 Q. Gentleman's agreement I'm referring
25 to.

0266

1 A. Yes. I just don't know what the
2 gentleman's agreement was.

3 Q. Let me refer you now to Exhibit 28,
4 that's the typewritten version, the file version,
5 if you will.

6 If you would be kind enough to refer
7 to page 6980 please. And there, two-thirds down
8 the page, the paragraph begins: We have reason
9 to believe.

10 A. Yes, I found it.

11 Q. Okay. Now, with Exhibit 27 at your
12 hand, page 7058, which is the draft which
13 corresponds to that page, let me ask a question.

14 Exhibit 27, in other words the draft
15 of this, states: We have reason to believe that
16 in spite of gentleman's agreement from the
17 tobacco industry in previous years that at least
18 some of the major companies have been increasing
19 biological studies within their own facilities,
20 correct? Is that correct?

21 A. Yes, that is a correct reading.

22 Q. But then on the final version it's
23 been changed to read as follows: We have reason
24 to believe that while this proposal to carry out
25 biological research and testing may seem from a

0267

1 radical departure from previous policy practice,
2 we are in fact only advocating that which our
3 competitors are also doing. Right?

4 A. That's read correctly.

5 Q. In other words, the reference in the
6 draft in the gentleman's agreement is not in the
7 final version; do you know why?

8 A. I have absolutely no idea, and I
9 don't know that it's not in the final version.
10 It's not in the final version where you read it.

11 Q. Well, you look throughout the final
12 version, sir, and see if you find any reference
13 to the gentleman's agreement.

14 MR. HOWARD: We'll take your
15 presentation.
16 MR. ADELMAN: Thank you.
17 Q. With that as a predicate, do you
18 know why it is that the phrase "gentleman's
19 agreement" in the draft is excluded from the
20 final version?
21 MR. HOWARD: Objection to the
22 form, no foundation.
23 You may answer.
24 Q. Do you know why it is, sir, that the
25 phrase "gentleman agreement's," that's in the
0268
1 draft, was not put in the final version?
2 A. I have absolutely no idea.
3 Q. Does that bother you?
4 A. No. I mean this is 1968, I don't
5 know anything about it.
6 It's so far from coming back from
7 the sales force -- and I don't know what the
8 gentleman's agreement was. And I don't know why
9 a draft would have it, that phrase, and a final
10 copy wouldn't, I just don't know.
11 I've told you before when certain
12 things bothered me. I'm not bothered by this
13 because I don't understand it.
14 Q. You just don't know enough about
15 this particular --
16 A. Right.
17 Q. I don't want to plow ground again,
18 but you were asked in earlier depositions whether
19 you had ever read the so called Frank statement.
20 A. Yes.
21 Q. And you said no?
22 A. I had not read it until the
23 deposition work had been done.
24 Q. Then it was shown to you?
25 A. Then it was shown to me, yes.
0269
1 Q. So up until the time of your
2 deposition this year you had never read the Frank
3 statement?
4 A. No.
5 Q. I will not go through that, I just
6 wanted to establish that fact.
7 You are familiar with the hearings
8 held before Congressman Waxman's committee --
9 actually subcommittee on health and environment
10 in March and April 1994?
11 A. If they are the hearings I'm
12 thinking about, yes, I am familiar with them.
13 Q. At which time representatives from
14 all of the major tobacco companies appeared and
15 testified under oath. Who testified on behalf of
16 Philip Morris, do you know?
17 A. William Campbell, who is my
18 predecessor.
19 MR. ADELMAN: May I have this
20 marked, please.
21 (Plaintiffs' Deposition Exhibit 29
22 was marked for identification and is annexed
23 hereto.)
24 BY MR. ADELMAN:

25 Q. What I've presented you, sir, is
0270
1 Exhibit 29, which is a portion of the official
2 committee report of Congressman Waxman's hearing
3 and, in particular, it's page 628 of the report
4 of the hearing that he held; the dates are
5 March 25th and April 14th, 1994.
6 I'd like you to read the page there
7 before I ask you some questions.
8 A. Okay. Just 628?
9 Q. Yes, that's the only page in this.
10 You see there, I hope, the questions
11 posed by one of the congressmen, Mr. Wyden,
12 asking each of the CEOs of the cigarette
13 companies this question, whether or not nicotine
14 is addictive, and the first answer, according to
15 Mr. Campbell it says, quote: "I believe nicotine
16 is not addictive, yes."
17 Have I read that correctly?
18 A. Yes, you have.
19 Q. Do you agree with Mr. Campbell's
20 statement?
21 MR. HOWARD: Let me object to the
22 form and, in particular, you're giving him one
23 page out of hearing transcript that went on for
24 two days and asking that question, which he may
25 answer, but I object to the form.

0271
1 MR. ADELMAN: You can answer.
2 A. I stated that -- you and I spent
3 some time an hour ago, the subject --
4 MR. ADELMAN: Could you repeat
5 your answer.
6 THE WITNESS: If I remember it.
7 MR. ADELMAN: Can you remember
8 your answer.
9 A. The answer to the question, I
10 believe that we discussed it an hour ago or so,
11 my feelings about whether cigarettes were
12 addictive, that's when I answered I will not -- I
13 refuse to answer the question yes or no.
14 Q. What do you mean you refuse to
15 answer the question?
16 A. It's just not a question you can
17 answer yes or no in my judgment. It's a
18 complicated question.
19 And I said that I believe on one
20 hand it does not meet the classic medical
21 definition of addiction; on the other hand, I'd
22 be willing to say that I believe that cigarettes
23 can be psychologically addictive, so I just can't
24 answer a simple statement: Are cigarettes
25 addictive or nicotine addictive?

0272
1 I refuse as an American citizen to
2 answer that yes or no.
3 Q. You've answered it. All right.
4 Fine. So I can follow up and say: Will you say
5 you'd make a distinction in terms of addiction
6 and Mr. Campbell didn't?
7 MR. HOWARD: Objection to form.
8 MR. ADELMAN: Well in this answer
9 he did.

10 MR. HOWARD: In this single answer
11 on this page he produced.
12 MR. ADELMAN: Right.
13 MR. HOWARD: That's fine, but I
14 object to that question.
15 MR. ADELMAN: You can answer.
16 A. Mr. Campbell said: I believe
17 nicotine is not addictive, yes.
18 Q. My question to you, sir, is he
19 didn't make the distinction you made in this
20 deposition regarding the types of addiction?
21 MR. HOWARD: Object to form.
22 MR. ADELMAN: Same -- we can get
23 by this.
24 A. I believe his answer was simpler
25 than mine, yes.

0273

1 Q. Did you ever discuss with
2 Mr. Campbell this point of his testimony, either
3 before he gave it or afterward?
4 A. No, I did not.
5 Q. Were you ever interviewed by the
6 Waxman committee or any of its representatives?
7 A. No, I was not.
8 Q. When did you succeed to be CEO?
9 A. In December of 1994.
10 Q. Do you know who B. Reuter is?
11 A. Yes.
12 Q. Who is B. Reuter?
13 A. A woman named Barbara Reuter.
14 Q. Who is she?
15 A. Barbara Reuter I believe is retired
16 now, had been an employee of Philip Morris for
17 many years and served in a variety of
18 capacities.
19 Q. Well generally what were her duties
20 there?
21 A. It's impossible to say.
22 She worked for 7-Up. She worked in
23 tobacco operations. She worked in planning. She
24 worked in brand management. She worked -- she
25 worked all over the place.

0274

1 She had no -- you could classify me
2 as a marketer based on my career. You can't
3 classify her as anything other than someone who
4 just kept doing different things.
5 Q. Did she work in New York?
6 A. She worked in New York. She also
7 worked in Richmond.
8 Q. Did she ever work in connection with
9 tobacco?
10 A. Yes; in the tobacco division, yes.
11 MR. ADELMAN: Let me mark this,
12 please, as the next exhibit.
13 (Plaintiffs' Deposition Exhibit 30
14 was marked for identification and is annexed
15 hereto.)
16 BY MR. ADELMAN:
17 Q. Now, I've presented you with a
18 document which is Exhibit 30 styled Confidential,
19 Table, Competitive Analysis, Organization,
20 Production, and then it says first draft from

21 B. Reuter.
22 Could you review that, focusing on
23 pages 8665 and 8669?
24 A. 65 and 69?
25 Q. Yes, sir.

0275
1 A. It's just two pages.
2 Q. Well read it all, but I want you to
3 focus on these two pages.
4 MR. HOWARD: Why don't we go off
5 camera so he gets a chance to read it all.
6 MR. ADELMAN: Surely.
7 THE VIDEOGRAPHER: Going off the
8 record, 4:05 p.m.
9 (Recess taken.)
10 THE VIDEOGRAPHER: Back on the
11 record, 4:10.
12 BY MR. ADELMAN:
13 Q. All right. Sir, have you reviewed
14 Exhibit 30 to your satisfaction?
15 A. I've looked at it, yes, to my
16 satisfaction.
17 Q. Okay. It is styled on the first
18 page of text Competitive Analysis, correct?
19 A. Yes.
20 Q. Now, have you ever read this before
21 today?
22 A. I have never seen this document
23 until you have just given it to me.
24 Q. From looking at it, what does it
25 purport to be?

0276
1 A. It looks to me to be some kind of
2 product development plan.
3 Q. Sir?
4 A. It looks to me to be some sort of
5 product development plan.
6 Q. Do you know when it was created?
7 A. I do not have any idea of when it
8 was created.
9 Q. Do you know why it was created?
10 A. I do not know why it was created.
11 Q. On page 8668, you'll notice, if you
12 turn to that page, in the middle of the page:
13 Estimated 1992 Nicotine Patch Prescription
14 Sales.
15 A. Yes.
16 Q. Does that suggest that this was
17 prepared in or about 1992?
18 A. It would suggest that, yes.
19 Q. Did you ever talk to Ms. Reuter
20 about this document?
21 A. No. I have not seen this document
22 and I have never talked to Mrs. Reuter about this
23 document; and the reason is that I was aware of
24 the document, without having ever seen it. And I
25 was aware that Mrs. Reuter was involved in legal

0277
1 proceedings that involved this document. And I
2 made the judgment -- because by the time I
3 learned that I was back in the tobacco business,
4 and I made the judgment, in view of her legal
5 proceedings with this document, that I was not

6 going to know anything about it.
7 Q. All right. First of all, how did
8 you become aware of the document?
9 A. The Wall Street Journal.
10 Q. Well -- and what did you learn?
11 A. I learned that Mrs. Reuter was being
12 investigated relative to this document, or being
13 deposed or interviewed, or whatever the procedure
14 would be called.
15 Q. Well there's a vast difference.
16 What was her legal problem?
17 MR. HOWARD: Object to the form.
18 MR. ADELMAN: If you know.
19 A. I read in the Wall Street Journal
20 that Mrs. Reuter was going in front of the grand
21 jury relative to this document.
22 Q. Where?
23 A. I believe in New York City.
24 Q. In here, in Manhattan?
25 A. Yes.

0278

1 Q. When you say relative to the
2 document, could you explain what that means?
3 A. That's -- whatever the Wall Street
4 Journal said, I don't remember.
5 Q. Well, was it alleged that she had
6 committed wrongdoing in creating this document?
7 A. Gee, I don't think so.
8 I think that people just wanted to
9 know what she meant by some of the things in the
10 document. I don't know. I don't think she was
11 the subject of the --
12 Q. But she was a witness?
13 A. She was a witness; yes, thank you.
14 Q. Does she still work for Philip
15 Morris?
16 A. She retired I think about three
17 months ago.
18 Q. Under what circumstances?
19 A. I don't know, as I wasn't there.
20 Q. Well was she asked to retire?
21 A. No, she wasn't, because she worked
22 under my aegis for years while all of this was
23 going on and there was no thought of asking her
24 to retire.
25 Q. What do you mean when you say she

0279

1 worked under your aegis?
2 A. She worked for Philip Morris
3 Incorporated.
4 Q. While you were chairman?
5 A. While I was president, yes.
6 Q. All right. So before today you
7 hadn't read this document?
8 A. That is correct.
9 I had not seen it or read it or
10 talked to Mrs. Reuter about it.
11 Q. On page 6 -- 8665, the first page --
12 A. Yes.
13 Q. -- second paragraph she writes as
14 follows: "Different people smoke cigarettes for
15 different reasons. But, the primary reason is to
16 deliver nicotine into their bodies." Do you

17 agree with that?
18 A. I don't agree with that; and the
19 reason I don't agree with it is somewhat
20 empirical. If that were true, then nicotine gum
21 and nicotine patches would be universally
22 successful if people wanted to stop smoking and
23 they used those, and that's not the case, so I
24 can't accept this empirically.

25 Q. On page 8669.

0280

1 A. Okay.
2 Q. At the bottom, two paragraphs, she
3 says: Philip Morris has chosen to pursue a
4 nicotine delivery device, like RJR's Premier,
5 continues the cigarette tradition of sucking on a
6 cylindrical mouthpiece to inhale flavorings and
7 nicotine from a tobacco based product.

8 Do you agree that a cigarette is a
9 nicotine delivery device?

10 A. No, I do not.

11 I believe that when you smoke a
12 cigarette that has nicotine in the tobacco that
13 you get nicotine when you smoke it, but I do not
14 believe I would characterize it as a nicotine
15 delivery device.

16 Q. Well, she says farther on: As
17 preparations are made to consider launching
18 table; what is table?

19 A. I have absolutely no idea what that
20 is.

21 Q. Does it appear to be a product that
22 she says has potential to replace a conventional
23 cigarette?

24 A. It appears to be that, but I don't
25 know.

0281

1 Q. You were present in the company and
2 you don't know what table is?

3 A. I was not in Philip Morris USA when
4 this project -- when she was writing this.

5 Q. You never heard of table?

6 A. I never heard of table. I wasn't in
7 the business at that point.

8 Q. Do you now know what table is?

9 A. I do not know what table -- I've
10 told you that I have intentionally, by design,
11 because of the situation made no effort to get an
12 understanding of what all of this is.

13 Q. What do you mean "by design" you
14 have --

15 A. By my own wishes. I did not -- with
16 someone who is working for me and was involved in
17 a grand jury hearing, I did not want to know
18 anything so I didn't have to ask any questions.

19 I wanted to preserve the integrity
20 of her being able to talk to the grand jury with
21 me knowing nothing.

22 Q. You were concerned of --

23 A. I didn't even want to ask her how's
24 it going.

25 Q. Let me ask my question.

0282

1 You were concerned of some

2 allegation of undo influence on your part?
3 A. I didn't want to -- I don't know
4 that I'm even sophisticated to understand that
5 enough.
6 I just didn't want to put her in the
7 position of having because I was the president to
8 even say one word about what was happening at
9 that grand jury, because I know that's
10 sacrosanct.

11 Q. Did she have counsel?

12 A. I don't know.

13 MR. ADELMAN: All right. Let me
14 go on here.

15 THE WITNESS: I may have made the
16 wrong decision on this, but I'm just telling you
17 how I felt and what I did.

18 Q. In a sentence it talks about what
19 she came up with. It says: Two key challenges
20 face Philip Morris, one: "Can Philip Morris
21 build a world-class nicotine delivery device that
22 can compete successfully with conventional
23 cigarettes as well as pharmaceutical company
24 cessation products?"

25 A. You've read that as I read it.

0283

1 Q. Do you know what she's referring to
2 by a "world-class nicotine delivery device"?

3 A. No, I do not.

4 Q. Number 2: "Will the consumer find
5 this revolutionary nicotine delivery device
6 uniquely appealing." Do you know what that's
7 referring to?

8 A. No, I don't.

9 Q. And I think your testimony is you
10 have never discussed this memo or heard
11 information, if you will, with anybody?

12 A. With no one.

13 Q. Who in the company has?

14 A. I do not know.

15 MR. HOWARD: Objection to form.

16 Q. If you know.

17 A. I do not know.

18 Q. Did you direct the company personnel
19 not to discuss this matter with her?

20 A. I directed her direct report, or her
21 supervisor, to not discuss it with her.

22 Q. To your knowledge, did she go to the
23 U.S. attorney on her own, or was she directed
24 there by somebody?

25 A. I do not know.

0284

1 Q. Are you familiar -- let me ask you
2 this question. I take it from our discussion
3 today, on this record here, that you've stated
4 quite clearly your view that marketing cigarettes
5 to minors is illegal?

6 A. I don't know that it's illegal, I
7 think it's wrong.

8 I don't know what laws actually
9 exist that say you cannot market to minors.
10 There maybe state laws.

11 Q. That's what I mean, please help me
12 here.

13 In the context of state laws here,
14 have you suggested in your testimony that
15 marketing to cigarettes to minors is illegal
16 under state law?

17 MR. HOWARD: I object to the
18 form. It calls for a legal conclusion, but --

19 MR. ADELMAN: Well, if he knows;
20 and I think he's testified to these laws.

21 A. If a state has a law that you shall
22 not provide free cigarettes to people under 18
23 years of age and you did that would be illegal
24 and wrong.

25 Q. You said -- go ahead.

0285

1 A. The laws relating to this are not
2 that clear. I mean there are some, I can't
3 recall them all; the Federal Trade Commission
4 oversees cigarette marketing practices. And the
5 reason that I am not that aware of the specifics
6 is that we haven't done it and haven't been
7 called on it because we haven't done it; so I'm
8 not sure what exactly what each of the laws are
9 and the nuances of the laws. But if there are
10 laws that exist that says thou shalt not do this
11 that relates to minors and cigarettes and it were
12 done that would be illegal.

13 Q. Or to put it in this way then: If
14 laws prohibited selling cigarettes to minors then
15 it would be illegal to do so?

16 A. Yes.

17 Q. And you've also said selling
18 cigarettes to minors is wrong?

19 A. What I've said is -- well, let's
20 parse the word "sell," if you don't mind, because
21 I want to make sure we keep this distinction.

22 If a retailer is in a state where it
23 is illegal to sell to minors and that retailer
24 sells to minors the retailer has committed an
25 illegal act. In some states the minors also has

0286

1 committed an illegal act for buying them, that's
2 one form of selling them; I believe that's
3 illegal.

4 I believe it is also wrong, as a
5 matter of policy, for Philip Morris to market to
6 minors. Philip Morris does not sell to minors,
7 and I have to sort of keep those two words
8 separate. Okay.

9 Q. So it would be wrong for Philip
10 Morris to market cigarettes to minors?

11 A. I believe it would be totally wrong.

12 Q. Would it be immoral for Philip
13 Morris to market cigarettes to minors?

14 A. Immoral? We're going to get into
15 what words mean.

16 I believe Philip Morris should not
17 do it. I believe that it would be wrong. Rather
18 than immoral, if you would, I would prefer the
19 word that I think it would be unethical for
20 Philip Morris to market to minors.

21 Q. You know Mr. Steven Goldstone, don't
22 you?

23 A. I do not know him, I know who he is.

24 Q. Who is he?
25 A. He's the chairman of R.J. -- he's
0287
1 the chairman of whatever the corporate parent is
2 of R.J. Reynolds Tobacco Company. Mr. Goldstone
3 is the chairman of Nabisco Holdings, or I don't
4 even know their --
5 Q. RJR Nabisco?
6 A. RJR Nabisco, thank you.
7 Q. With respect to that gentleman, are
8 you aware that he testified in 1998 that a
9 cigarette company marketing cigarettes to minors
10 was committing an immoral act?
11 A. I am not aware of that.
12 Q. If he said that do you agree with
13 it?
14 MR. HOWARD: Objection to form.
15 MR. ADELMAN: If he knows.
16 A. If he said that that's his choice of
17 words; I chose unethical. I hate semantics of
18 immoral, unethical, indiscriminate, whatever.
19 If Mr. Goldstone feels it's immoral,
20 that's close enough to a word that I wouldn't
21 object to; but I certainly grant him the right to
22 think that. I said I preferred to use unethical.
23 Q. You wouldn't agree with immoral --
24 you wouldn't disagree with immoral?
25 A. I wouldn't disagree with immoral; I

0288
1 prefer unethical, if that's a fair way to
2 conclude that.
3 MR. ADELMAN: Off the record.
4 Off the record, please.
5 THE VIDEOGRAPHER: Going off the
6 record, it's 4:23 p.m.
7 (Discussion off the record.)
8 THE VIDEOGRAPHER: Back on the
9 record, 4:24 p.m.
10 MR. ADELMAN: Mark this as 31,
11 please, then subject to any reexamination that
12 comes out.
13 (Plaintiffs' Deposition Exhibit 31
14 was marked for identification and is annexed
15 hereto.)
16 BY MR. ADELMAN:
17 Q. Mr. Morgan, I presented you with
18 Exhibit 31, which is a July 1, 1970 Philip Morris
19 memo from Mr. Fontaine to Mr. R.R. Millhiser.
20 A. Yes, sir.
21 Q. Have you read this?
22 A. I'm reading it right now.
23 Q. All right.
24 A. I was copied on it. I was just
25 refreshing myself. Okay.

0289
1 Q. Earlier in your deposition you were
2 asked questions regarding certain studies or
3 surveys done by the Roper group.
4 A. Yes.
5 Q. And there was some confusion I think
6 it's fair to say --
7 A. Yes.
8 Q. -- on whether one of the Roper

9 studies was actually carried out and whether the
10 recommendation for another one was not?

11 A. That is correct. I believe -- I'm
12 sorry.

13 Q. Yes, let me ask a question.

14 Does Exhibit 31 contribute to your
15 clarifying that issue for us?

16 A. Yes, it does. We were talking about
17 Exhibit Number 5, which is a proposal to conduct
18 the study among people who ordinarily were not
19 studied. This does help me, thank you.

20 This says quite clearly that the
21 recommendation of Mr. Fountaine or Mr. Millhiser,
22 whatever it was, on the bottom of the first
23 page: "On the basis that the findings are
24 neither likely to be actionable nor surprising, I
25 recommend that we do not undertake the studies."

0290

1 So my confusion then is clarified,
2 which is -- I said that I didn't know if
3 Exhibit 5 was done or not. It looks to me like
4 it was not done; but that then led to the one
5 study that I did say was done, which I now think
6 is the '74 Roper study which did, by design, talk
7 to people under 18 years of age.

8 Q. So the record is clear, we now
9 understand from your testimony and these
10 documents that the proposal for the Roper study
11 in 1970 was not carried out?

12 A. Well, actually all we can conclude
13 from here is that it was recommended that it not
14 be carried out. I don't believe it was carried
15 out.

16 Q. But nevertheless, if the proposed
17 Roper study in '74 that happened to include
18 people under 18 was carried out?

19 A. Yes, it was.

20 MR. ADELMAN: All right. That's
21 all I have. Thank you.

22 THE WITNESS: Thank you.

23 MR. HOWARD: Mr. Morgan, at the
24 risk of keeping you an extra few minutes on this
25 Thanksgiving evening, I do have some follow up

0291

1 questions, points of clarification.

2

3

EXAMINATION

4 BY MR. HOWARD:

5 Q. I'd like to start actually with that
6 very exhibit you were just discussing with
7 Mr. Adelman.

8 You read some words at the bottom of
9 that memo to the effect that the results of the
10 proposed Roper study of people aged 14 to 17
11 would not be actionable; do you see that?

12 A. Yes.

13 Q. What significance do you place on
14 those words?

15 A. Well, to me it means that
16 Mr. Fountaine, the author of the memo, was fully
17 aware that information regarding people below 18
18 was not actionable, i.e., there would be no
19 resulting action that would be brought about by

20 that information; shorthanded saying that he
21 understood that he didn't market to people under
22 18 and, therefore, the data did not lead to any
23 action, not actionable.

24 Q. No marketing action.

25 A. No marketing action.

0292

1 Q. I want to have you look back now at
2 the stack in front of you at the very first
3 exhibit that you were shown today, which was the
4 cover memo and the draft advertisement of Kids
5 Should Not Smoke in relation to the 1995, and
6 this was in 1996 Action Against Access campaign;
7 do you have that in front of you?

8 A. Yes, I do.

9 Q. Mr. Adelman asked you in connection
10 with this -- and I believe I'm quoting the
11 question correctly, that he asked you whether
12 this advertisement in this memo showed that at
13 least since 1996 it was Philip Morris' position
14 that kids should not smoke, and you answered that
15 question affirmatively; do you recall that?

16 A. I don't recall it specifically, but
17 that sounds right.

18 Q. Let me ask you: Was Exhibit 1 and
19 the Action Against Access campaign a reflection
20 of a change of position at Philip Morris
21 concerning whether or not kids should smoke?

22 MR. ADELMAN: Object to form.

23 MR. HOWARD: You may answer that.

24 A. I thought I answered the question,
25 maybe not, specifically what you just posed.

0293

1 But what this was was a coalescence
2 of a broad scaled program which involved
3 legislation and everything else and it was a
4 continuation or an acceleration and a focus on
5 something that had been happening for years with
6 regard to Philip Morris' attitude about kids not
7 smoking.

8 Q. In your experience with the company,
9 in the years that you were with the company from
10 1963 to 1996, what was Philip Morris' position
11 concerning whether or not kids should smoke?

12 A. I believe that Philip Morris'
13 position was that kids should not smoke and, as I
14 outlined in one answer, through controls on
15 sampling and promotion and media restrictions,
16 the age of models, and a whole variety of things,
17 the company acknowledged in its programs and in
18 its policies a desire to not influence children
19 to stop smoking.

20 Q. And that leads to a follow up
21 Mr. Adelman did follow up with a question
22 concerning whether since 1996 it has been Philip
23 Morris' position not to market to children; can
24 you tell me what Philip Morris' position was
25 between 1963, when you joined the company, and

0294

1 1996 on that issue?

2 A. The same position, that it should
3 not market to kids.

4 Q. You mentioned before during your

5 testimony about, I believe, 250,000 marketing
6 documents that were produced in discovery in
7 Minnesota and to the Minnesota depository and the
8 hundreds of studies, marketing research studies,
9 conducted each year.

10 In your 30 years plus with the
11 company reviewing such documents how many
12 marketing documents, documents reflecting
13 strategy on what the company was doing in its
14 marketing programs, reflected its strategy of
15 marketing to minors?

16 MR. ADELMAN: Object to form.

17 MR. HOWARD: You may answer.

18 A. I do not know of -- have been part
19 of any meeting or seen any document that
20 reflected marketing to kids in the whole time
21 I've been there, other than some discussions
22 about how not to do it and what to be careful of
23 in terms of making sure that we didn't.

24 And I just find it -- continue to
25 find it interesting here now through my sixth

0295

1 deposition and one court appearance that other
2 than statistical analyses of public data, and a
3 couple of exceptions where Philip Morris
4 generated the data itself, in terms of marketing
5 programs and strategies and evaluations of
6 programs and instructions to two or 3,000 people
7 who are involved in marketing, there's no piece
8 of paper that shows that Philip Morris marketed
9 to kids, and the reason is Philip Morris didn't
10 market to kids.

11 Q. Where are Philip Morris' marketing
12 strategies documented?

13 A. Well, the main place to find them is
14 the annual marketing plan for each brand, which
15 is a business evaluation, a strategic analysis,
16 has objectives, strategies, tactics, expected
17 results, talks about media budgets, promotion
18 budgets, it talks about advertising campaigns,
19 promotional campaigns; the annual brand marketing
20 plan for each brand is the Bible on which the
21 activities of a brand are planned and executed.

22 Each brand has an annual marketing
23 plan, that's been true since the 1960s. And if
24 someone wanted to see what Philip Morris' intent
25 was and what it actually did, one would turn to

0296

1 those brand marketing plans.

2 Q. And in your experience with Phillips
3 Morris, how many brand marketing plans did you
4 see that reflected an intent or strategy to
5 market to minors?

6 MR. ADELMAN: Object to form.

7 A. I have seen over a hundred brand
8 marketing plans and not one of them reflected the
9 desire, intent, strategy or reality of marketing
10 to people below legal age.

11 Q. I want you to take a look at one of
12 the Myron Johnston documents that you were shown
13 by plaintiffs' counsel today; look at that, I
14 think it was Exhibit 10.

15 This is the April 1976 memorandum

16 from Mr. Ryan and Mr. Johnston to Mr. Dunn
17 regarding teenage smoking. It says in its
18 opening paragraph: "Recent press reports
19 indicate an upsurge in the proportion of teenage
20 smokers with the increase being particularly high
21 among young teenaged girls. No sound
22 explanations have been proffered for the latter
23 increase."

24 Are you aware of any explanations
25 that were offered in this memorandum or anywhere

0297

1 else that attributed the reported upsurge in
2 teenage smoking, in particular among teenage
3 girls, to any marketing efforts of any tobacco
4 company?

5 A. No.

6 Q. Take a look at Exhibit 12 I believe;
7 this is the March 29th, 1979 document entitled
8 "Marlboro."

9 A. I don't have it.

10 Q. I'll show you mine.

11 A. I don't have it in order. I have
12 it.

13 Q. You have it.

14 A. I just had it out of order. Okay.

15 Q. Mr. Adelman asked you some questions
16 about some of the programs reflected on page 2.
17 And, in particular, the summer sampling program;
18 do you see that?

19 A. Yes.

20 Q. I believe you mentioned the purpose
21 of sampling being to -- in connection with
22 pressure on the marketplace encouraging trial;
23 what do you mean by "trial"?

24 A. Trial would be to get a smoker of a
25 competitive brand to actually smoke a Marlboro,

0298

1 and the easiest way to do that is to give them a
2 free Marlboro. And so sampling would be to give
3 them a sample packet of four cigarettes and have
4 them, if they were a Winston smoker, try a
5 Marlboro.

6 Q. Were there any restrictions placed
7 on whom you would give samples to?

8 A. Sure. There were manuals that very
9 specifically said you shouldn't give it to people
10 under 21 years of age and you should not give it
11 to nonsmokers; you should determine first if
12 someone smoked, are they over at least 21, and
13 only then should you even offer them a sample.
14 You didn't even give it to them, ask them if they
15 wanted them.

16 Q. Why was it restricted to smokers
17 versus nonsmokers, putting aside the age issue?

18 A. Well because Philip Morris is not in
19 the business of getting nonsmokers to start
20 smoking; we do not market to nonsmokers.

21 If someone has made a decision not
22 to smoke, we respect that right, and we're not
23 going to jam cigarettes into their face to get
24 them to start smoking.

25 Q. Looking at the next exhibit,

0299

1 Exhibit 13, this is the memorandum dated
2 September 17th, 1981 from Mr. Johnston to Harry
3 Daniel concerning the federal excise tax.

4 And there was some discussion in
5 this document that was explored by Mr. Adelman
6 concerning cross elasticities and price
7 elasticities as prices of cigarettes might impact
8 teenage smokers; do you recall that?

9 A. Yes.

10 Q. Do you recall also testifying that
11 Philip Morris, as a general matter, opposed
12 proposals at any time to increase federal excise
13 taxes?

14 A. Yes.

15 Q. Let me ask you: Did Philip Morris,
16 during your tenure with the company, oppose
17 increases in federal excise taxes because of any
18 impact it would have on smoking among teenagers?

19 MR. ADELMAN: Object to form.

20 MR. HOWARD: You may answer.

21 A. No.

22 Q. Why was it that Philip Morris
23 opposed and continues to oppose federal excise
24 tax?

25 MR. ADELMAN: Same objection,

0300
1 object to the form.

2 MR. HOWARD: If you know.

3 A. Well I do know.

4 MR. ADELMAN: I still object.

5 A. It's because Philip Morris is a
6 cigarette company and it believes, as do I, that
7 excise taxes on cigarettes are discriminatory,
8 they are singling out smokers. They're not like
9 an income tax, they're an excise tax.

10 I'm struck by an analogy that if a
11 state were violently against labor unions, and 25
12 percent of the workers in that state belonged to
13 unions and, as 25 percent of the people smoke,
14 that the well of the majority of the 75 percent,
15 if they were opposed to unions, on a fundamental
16 basis, it said because union labor makes more
17 money than nonunion labor people in the state pay
18 more for their product, the state arbitrarily
19 assigned a 10 percent wage tax to union workers
20 only, unions would scream and cry that that was
21 discriminatory, unfair and made no sense and is
22 unjustified.

23 I think that's what Philip Morris
24 does with fighting excise taxes, it says
25 cigarette smokers already pay a disproportionate

0301
1 share of taxes. Cigarettes are one of the most
2 heavily taxed items already, and to increase that
3 is discriminatory, unfair, and singles out
4 smokers to pay excessive taxes in the country.
5 And a manufacturer, just like a labor union,
6 would have the right to defend its interests and
7 the interest of the people who either belong to
8 the union or who choose to smoke cigarettes.

9 Q. Speaking of defending the interests
10 of the company in the industry, could you
11 describe generally the purpose of committees like

12 the TI Communications Committee and its
13 activities?

14 A. The Communications Committee of the
15 TI was a committee that each company put a
16 marketing or communications person on the
17 committee and it was designed to represent the
18 interests of the tobacco industry.

19 Q. And in what form?

20 A. In that case in communicating the
21 industry's point of view, if it had a point of
22 view on excise taxes. It would be the group that
23 would -- because they're communications experts,
24 would be responsible for designing or supervising
25 the creation of the communication of that point

0302

1 of view that excise taxes were wrong or
2 discriminatory.

3 Q. I believe when you were asked about
4 one of the documents relating to TI by
5 Mr. Adelman earlier today -- and I can tell you
6 which one it is, if you give me a moment -- the
7 one that talked about bad research --

8 A. Yes.

9 Q. -- do you recall that document?

10 A. I do.

11 Q. And you were going to offer a
12 contemporary example of criticizing or
13 challenging of bad research and did not have the
14 opportunity, what was on your mind at that
15 point?

16 A. What was on my mind was something I
17 testified to, which was: I have said a number of
18 times, under oath and not under oath, that I
19 thought that the environmental protection
20 agencies report on classifying cigarette smoking
21 as a class A carcinogen was a scientific error,
22 that the data was manipulated, that the report
23 had no substance, it was politically motivated
24 and it was just simply wrong, that was an
25 unpopular view at the time; and I believed it,

0303

1 and I said it, I've done a lot of reading on it.
2 And, most recently, the highest court in the
3 land, or next to the highest court in the land,
4 judged that report to be exactly what I said it
5 was.

6 And it brings up an interesting
7 point, which is, do I not have the right to state
8 my point of view that I thought it was that. And
9 a court upheld that point of view, that the EPA
10 had erred rather grievously in its findings.

11 And if 20 years from now some more
12 research comes out or something and it is judged
13 that environmental tobacco smoke causes some
14 risk, does that make what I did today, in view of
15 the current evidence, of disbelieving in
16 challenge; does that make me wrong or anything
17 else, no.

18 MR. ADELMAN: All right. I move
19 to strike that answer as not responsive, in
20 particular, in reference to court determinations
21 and litigation, it shouldn't be before this jury.

22 Move to strike.

23 MR. HOWARD: You may conclude your
24 answer.
25 THE WITNESS: My answer is over.
0304
1 MR. HOWARD: Okay.
2 MR. ADELMAN: And my motion
3 stands.
4 BY MR. HOWARD:
5 Q. Let me show you now or refer you now
6 to Plaintiffs' Exhibit 16. Do you have it?
7 A. 16. Go ahead.
8 Q. A couple of questions.
9 MR. ADELMAN: Can you identify the
10 document?
11 MR. HOWARD: I'm sorry. It's the
12 July 1974 report, The New Competition for
13 Marlboro's Franchise.
14 THE WITNESS: Go ahead.
15 Q. If you look at page 2 of the
16 document which you referred to by plaintiffs'
17 counsel, at the top it talked about: The
18 resulting interviews provided data that matched
19 the more carefully controlled sampling procedures
20 of the National Tracking Study; that National
21 Tracking Study is the Philip Morris tracking
22 study?
23 A. I assume so.
24 Q. And you've testified that there were
25 age restrictions to that tracking study; is that
0305
1 correct?
2 A. That's correct.
3 Q. Is that reflected on the tables on
4 this very page?
5 A. I assume -- I assume it is.
6 Q. How about in the middle of the
7 page?
8 MR. ADELMAN: I object, you're
9 leading all over the place. Object to the form,
10 and please don't lead him.
11 A. Okay. The chart in the middle of
12 the page shows age 18 to 24- '74, tracking to age
13 to 24 Roper suggesting that the two studies had
14 different age measures. The tracking study, the
15 ongoing study, stopped at age -- stopped going
16 down at age 18. Roper, as we indicated earlier,
17 in that study did go below the age of 18.
18 Q. You were asked by Mr. Adelman during
19 his examination whether or not sitting in 1974
20 you had the opportunity to approve or disapprove
21 of this study whether you would have approved of
22 it. If that study had made suggestions for
23 marketing to people below the age of 18 as
24 opposed to studying, would you have approved it
25 if --
0306
1 A. If a proposal?
2 MR. ADELMAN: Object to the form.
3 I'm sorry. Object to the form.
4 Q. If the study being proposed in 1974
5 was to market to people under the age of 18 --
6 let me ask you just hypothetically, if any
7 proposal were made to you in 1974 to market to

8 people below the age of 18 would you or would you
9 not have approved such a study?

10 MR. ADELMAN: Objection to form.

11 A. I would not have approved any
12 proposal, action, strategy to market to people
13 under 18, I just wouldn't have done it.

14 MR. HOWARD: Thank you,
15 Mr. Morgan. I have no further questions.

16
17 EXAMINATION

18 BY MR. ADELMAN:

19 Q. A couple of points.
20 You've testified here in your
21 examination by counsel that Philip Morris did not
22 market to nonsmokers, correct?

23 A. I said that I believe Philip Morris
24 believes it should not market to nonsmokers.
25 It's a excess --

0307

1 Q. It should not?

2 A. It should not and it did not; but to
3 run an ad in Time Magazine, okay, where 35
4 percent of the people smoke and 65 percent don't
5 smoke, and you run the ad to reach the smokers,
6 it's impossible for me to sit here and say:
7 Philip Morris did not run advertising that
8 nonsmokers didn't see.

9 Q. And along those lines, just to
10 clarify, I think you started to do that.

11 Just to clarify, you can't say on
12 this record that Philip Morris' marketing didn't
13 cause some nonsmokers to begin smoking, you can't
14 say that?

15 A. I cannot say that.

16 Q. And that would -- that group of
17 nonsmokers who began smoking, would include some
18 minors, correct? You can't say --

19 A. I cannot say that Philip Morris'
20 marketing efforts aimed at smokers did not -- I
21 cannot say that not a single nonsmoker or a
22 single minor was not influenced by that to start
23 smoking, I cannot say that.

24 Q. Did Philip Morris or has Philip
25 Morris ever done any studies to calculate the

0308

1 number of nonsmokers who were inspired to smoke
2 by virtue of Philip Morris' marketing efforts?

3 A. Not that I'm aware of, but
4 government studies continue to indicate that
5 marketing hardly makes the list of reasons why
6 people say they start smoking; there are four or
7 five reasons ahead of that.

8 Q. You are aware, by the way, that this
9 case in which you're testifying here today is a
10 class action brought by numerous labor union,
11 health workers that were --

12 A. Yes, I am. I'm aware of that.

13 Q. You were aware of that when you gave
14 your answers to counsel a little while ago?

15 A. Yes, I was.

16 Q. And finally, sir, regarding the
17 issue that we were discussing, if a cigarette
18 company was going to market to minors they

19 wouldn't document that in their records, would
20 they?

21 MR. HOWARD: Objection, asked and
22 answered.

23 A. I believe that a cigarette company
24 cannot operate, cannot operate without written
25 instructions to this diverse group of 3,000

0309
1 people spread around the country.

2 I would say that -- I'd answer the
3 question this way: It would be impossible for
4 Philip Morris to do anything of significance
5 without documentation existing for it.
6 Documented for instruction and documented in the
7 files, it is just inconceivable to me.

8 Q. You're on the record saying --
9 forgetting Philip Morris, but generally, if a
10 cigarette company were going to do things that
11 you are saying broke the law that they would turn
12 around and document it; is that your testimony?
13 Is that --

14 A. My testimony, sir, is that anything
15 that Philip Morris did that involved marketing
16 would be documented.

17 Q. Even if it were illegal, illegal?

18 A. If Philip Morris did it it would be
19 documented, yes. You can't do it without
20 documents.

21 Q. Even if Philip Morris were doing
22 illegal things they would document, is that your
23 testimony?

24 A. That's my belief. I don't think
25 Philip Morris would do illegal things.

0310
1 Q. I know you don't, sir, but I want
2 you to answer my question.

3 A. I think I did.

4 Q. I want to be sure for the record.

5 A. Go ahead again. Let's try again.

6 Q. Even if Philip Morris were doing
7 things illegally, in terms of its marketing, you
8 say they would document?

9 A. I believe that to be -- that is
10 true.

11 MR. ADELMAN: Okay. That's all I
12 have. Thank you.

13 THE WITNESS: Okay.

14 MR. HOWARD: Thank you.

15 THE WITNESS: Thank you.

16 THE VIDEOGRAPHER: This concludes
17 the deposition of James J. Morgan. It is
18 Wednesday, November 25th, 1998; the time is now
19 4:50 p.m.

20 (TIME NOTED: 4:50 P.M.)
21
22
23
24
25

0311
1 I declare under penalty of perjury
2 under the laws of the State of Ohio
3 that the foregoing is true and correct.

Executed on _____, 19____,
at _____, _____.

SIGNATURE OF THE WITNESS

STATE OF NEW YORK)
 ss:
COUNTY OF NEW YORK)

I, ELIZABETH DAVILA, a Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That the foregoing proceedings were
taken down by me in shorthand and thereafter
transcribed under my direction and supervision,
and that the within transcript is a true record
of such proceedings.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this _____ day of _____, 199__.

ELIZABETH DAVILA

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5	1	Memo dated 4/8/96,	35
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